LIBRARY
3844

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FROM

January to November 1861.

VOL. VII.

Published by the Authority of the Council.

CALCUTTA:

SAVIELLE & CRANENBURGH, BENGAL PRINTING COMPANY LIMITED.

1861.

ERRATA.

Column 760, line 25. For "*did*" read "*had*"
„ 784. Omit "*Peacock*" in line 22.

BENGAL SECRET LIBRARY

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

Saturday, January 5, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

The Hon'ble Sir H. B. E. Frere,
The Hon'ble C. C. Beadon,
H. F. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq.,
and
The Hon'ble Sir C. R. M. Jackson.

MESSAGES.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)"; the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies"; the Bill "to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal"; the Bill "further to amend Act XXXVI of 1860"; the Bill "to amend Act XVIII of 1854 (relating to Railways in India)"; and the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal)."

FINANCES OF INDIA.

THE CLERK presented to the Council a Petition of Inhabitants and Tax Payers of Madras, relative to the Finances of India.

MR. FORBES moved that the Petition be printed.

Agreed to.

CRIMINAL PROCEDURE.

THE CLERK also presented to the Council a Petition of the British Indian Association concerning the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARINGTON moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

PEPPER-DUTY (COCHIN).

MR. FORBES presented the Report of the Select Committee on the Bill "to provide for the collection of Duty of Customs on Pepper exported by sea from the British Port of Cochin."

PORT-DUES (CONCAN).

MR. ERSKINE, in moving the first reading of a Bill "for the levy of Port-Dues in the Ports of the Concan," said that the Bill which he now had the honour to present to the Council was another of a series of Bills which had been passed by this Council, in order to give effect to the provisions of the Ports Act XXII of 1855. It might be in the recollection of some Members of the Council that, as long ago as 1857, the Bombay Government had proposed, by means of a single Bill,

to provide for the levy of Port-dues in the Continental Ports under that Presidency. At that time, however, doubts arose in the Council as to the compatibility of a general arrangement of that kind with the intention of the original Ports Act, and the correspondence was consequently referred to a Select Committee then sitting on a kindred Bill. This Select Committee reported in November 1857, that in their opinion the plan of regarding whole classes of Ports as a single Port for the purposes of the original Act, and allowing them to have a common fund and a common administration of it, should be sanctioned only in respect to groups of Ports which, owing to geographical position or other local circumstances, might be expected to derive common benefits from the improvements to be effected in this way. In accordance with these views a Bill was passed in the spring of the following year for the Ports in the Gulf of Cambay, which Bill now stood as Act IX of 1858. Those Ports were by that Act to be treated as a single Port in respect to the levy of Port-dues, and were placed under a common administration. The Bombay Government now proposed in the same way to treat as single Ports several groups of Ports in the Concan Districts of the Bombay Presidency, and the Bill which he now begged to introduce provided for three such groups. The central one included all those which were located on, or were in more immediate communication with, the harbour of Bombay and its outlets. A second included some Ports in the North-Western portion of the Tanna Collectorate. And a third included most of the Ports in the Rutnageeree District to the north of Goa. The present Bill was drawn up *verbatim* on the model of Act [illegible] of 185[illegible] already referred to; and the rate of duty now proposed to be levied were identical with those provided for in the same Act. Under these circumstances he thought it hardly necessary to detain the Council with further details, and he should only therefore move that the Bill be now read a first time.

The Bill was read a first time.

MERCHANT SEAMEN.

MR. BEADON, in moving the first reading of a Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)," said that the object of the Bill was merely the better to enable Courts at the Out-ports of British India to take cognizance of charges of incompetency and misconduct against masters and mates of Merchant vessels. The law at present stood thus. First, in respect to masters and mates holding certificates from the Board of Trade in England. Under the provisions of the Merchant Shipping Act of 1854, all Courts having Admiralty Jurisdiction had the power, on the application of the owner of a ship, to make enquiry into the conduct of any certificated master, and to remove him from the command of his ship if the Court thought it necessary. Beyond that, the Board of Trade in England, if it had reason to believe that any master or mate was, from incompetency or misconduct, unfit to discharge his duties, was empowered to appoint persons to investigate the matter, and thereupon to cancel or suspend his certificate. Under the 242nd Section of the Act, the Board of Trade had also power to suspend or cancel the certificate of any Master or Mate,

"if upon any investigation made by any Court or Tribunal authorized, or hereafter to be authorized by the Legislative Authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to any ship or loss of life has been caused by his wrongful act, or default, and such report is confirmed by the Governor or person administering the Government of such possession."

Now no provision had hitherto been made for vesting any Courts in the British possessions in India with such authority. The Indian Act No. I of 1859, which followed almost *verbatim*

the provisions of the English Act, making them applicable to masters and mates who had received certificates from a local Government, also provided that Courts having Admiralty Jurisdiction might remove the master of any vessel; and it further provided following the words of the English Act, that the local Government might deprive of his certificate any master or mate who, upon investigation made, either by an Officer specially appointed by the Government, or by any Court or tribunal authorized by law on that behalf, should be found incompetent or guilty of any gross act of misconduct, drunkenness, or tyranny. But no legislative provision had been made to vest any Court or Tribunal with the requisite authority, either under the Macaulay or under the Local Act.

Some time ago the Principal Assistant Judge took cognizance of a complaint made against the master of a merchant vessel, who held a certificate from the Board of Trade, and having adjudged him guilty of misconduct, removed him from the command of his vessel, and sent the proceedings of the case to the Board of Trade. The Board of Trade, admitting that the evidence justified the finding of the Assistant, at the same time pointed out, in a letter to the Secretary of State for India, that the proceeding was invalid, inasmuch as the Assistant had no Admiralty Jurisdiction, and was not empowered, by any legislative authority, to investigate the charge which had been brought before him. The Secretary of State had forwarded the paper in this matter to the Government of India, desiring that no time might be lost in taking measures for placing the administration on a proper constitutional basis, and for investing the Courts with the necessary powers for dealing with cases under the Indian Merchant Seamen's Act.

Now it was not in the power of this Council to make any law which would alter in any way the English Merchant Shipping Act of 1854, except so far as that Act gave the Indian Legislature power to do so. Nor could it vest any Court with Admiralty Jurisdiction, or with power to remove a master holding a certificate from the Board of Trade. That he apprehended, could be done by Parliament alone. All, therefore, that could be done was to pass a law, empowering local authorities, without any instruction from that effect either from the Board of Trade or from the local Government, to take cognizance of charges of incompetency and misconduct on the part of masters or mates, whether they had received their certificates from the Board of Trade or from the local Government, and to report the result to the local Government, by which or by the Board of Trade, as the case might be, the certificate could be suspended or withdrawn.

Beyond this, it was proposed not to vest with Admiralty Jurisdiction any Court that did not now enjoy it, but to give the principal Criminal Court at every Port where there was no Court having Admiralty Jurisdiction, power to enquire into the conduct of masters certificated by the local Government, and to remove them if necessary. That was the object of the Bill, and he believed that that was all that could be done here. If it were desired to vest Courts in India other than those vested with Admiralty Jurisdiction with the power of removing masters holding certificates from the Board of Trade, this could only be done by Act of Parliament.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

FLOGGING.

MR. HARRINGTON moved the second reading of the Bill to provide for the punishment of flogging in certain cases.

SIR CHARLES JACKSON said, he had hoped that when the question of flogging was referred to a Select Committee of this Council, they would have been prepared to lay down some broad principles on which legislation on this subject should be based. He regretted to say, however, that he had been greatly disappointed with the

Report of the Select Committee, and the Bill founded upon it. He had looked through the Bill in vain to find any leading principle to which its provisions might be referred. The Bill, for instance, provided the punishment of flogging in cases of rape and unnatural offences, and no one would object to that. But it also provided flogging as punishment for theft, robbery, and even larceny. It was surely sufficient to state this in order to show that the Bill was framed upon no principle in defining the cases in which the punishment of flogging might be resorted to. Then it was to be considered that the Bill applied to all Europeans as well as Natives, and in that respect he regarded it practically as a retrograde measure. Not being based on any principle, all that could be said for the Bill was that it merely re-enacted the existing law as regarded natives, and kindly extended its provisions to the Europeans also. He did not think that this Council, which was just about to inaugurate a new Penal Code and to pass a new Code of Criminal Procedure, would be disposed to pass an Act, sanctioning the severe punishment of flogging for trivial offences, a punishment which was wholly opposed to the spirit of legislation in the present day. Now he wished it to be distinctly understood that he did not object to flogging altogether. He did not object to that punishment if applied to a man already demoralized. For instance, he saw no objection to its being applied to persons committing grossly indecent or unnatural offences, or to persons who, from the constant repetition of offences, might well be considered dead to all sense of honor and shame, the confinement of a prison being no object of terror to them. To such persons, being, in fact, already demoralized, the lash might be beneficially applied, as it might, in their case, prove a strong deterrent to crime. But what he did object to was the resort to this punishment in trivial cases, and the resort to it on the commission of any offence for the first time, except in cases of a very degraded nature, to which he had already adverted; for the effect of flogging any European or any educated Native must be to cause loss of all self-respect, and render his reformation almost hopeless. The question, he believed, had never been fairly considered in any country. In England it was formerly the practice to flog for every trivial offence. This was owing to more reasons than one, and particularly to the state of the jails at that period. Even women used to be exposed to this degrading punishment. If we were to take Lord Byron's Diary as an authority, when he was about to embark at Falmouth in 1809, a woman was flogged at the cart's tail, because, in addition to the crime of larceny, she had been pertinacious and had sworn at the Mayor. What was the consequence of this wretched system? It excited strong feelings of disgust, and, in consequence, practically, with very few exceptions, corporal punishment had been abolished in England. He did not wish to go so far in this country, for he thought that this punishment, if discreetly applied to refractory offenders, might be a useful deterrent from crime. But he was objected to this Bill, because it was a retrograde measure as applied to Europeans. In England the punishment had been practically abolished. In the Supreme Courts in this country, no doubt, the Statutes which related to them empowered the Judges to inflict corporal punishment in very many cases, but what had been the practice? He had been twelve years in the country, and he did not know a single case in which such a sentence had been passed by of the Supreme Courts. That being so, why should we render Europeans liable in this country to a punishment which had been abolished in England? But then it would be said that he was claiming an exemption for Europeans. He did no such thing. It was true that he did not wish to see Europeans in this country subjected to the punishment of flogging, except in very special cases. But neither did he wish Natives to be flogged, except under similar circumstances. He did not desire to see any exceptional law, but, on the contrary,

he wished to carry out the principle of uniformity by raising Natives to the same level with Europeans. That was the way in which this question had invariably been met. Whenever the necessity had arisen for legislating for the two classes, and one had been found in possession of advantages which the other had not, the panacea had constantly been to lower the European to the level of the Native. That was in fact the view taken by those who supported the Black Acts, upon which subject, however, he would not then enter. He would say in a few words that any Act of this kind should be based on this principle, that we ought not to flog any but a demoralized man. The demoralization might, in some few cases to which he had already adverted, be inferred from the gross nature of the crime, or might be inferred from a constant repetition of offences, showing a total absence of shame or self-respect. To this general rule there might be exceptions, and he did not know any general principle which had no exceptions. The first exception, he believed, might be that of boys under 16 years of age, who might be beneficially flogged. And then he believed it was probable, though he was not sure, and spoke with great diffidence on the subject, that some power of corporal punishment ought to be reserved for jail discipline. He was induced to think a resort to it might be avoided by introducing solitary cells; but, no doubt, whether this should be an exception ought to be considered. Then there might be another exception, and that was the case of certain nomade tribes, who had been accustomed to live in the open air all their lives, and to whom, he was informed, confinement in a jail was tantamount to the punishment of death. These cases might also form another exception to the general rule.

Sir Charles Jackson concluded by apologizing to the Council for having occupied so much of their time. But he thought this a serious matter. The Council had just passed a Penal Code, and were about to pass a Code of Criminal Procedure, and these Acts would write the name of the Council in the History of India, and he should be sorry to send down to posterity, with these Codes, the Act in question which was opposed to the spirit of Legislation at Home, and was, as regards Europeans, a retrograde measure.

MR. ERSKINE said, it was not his wish to say much at present as to a point specially adverted to by the Honorable and learned Member who had just sat down, namely, the propriety of extending the application of this Bill to Europeans. This—regard being had to the provisions of the new Criminal Procedure Code—must chiefly, he (Mr. Erskine) presumed, refer to the supposed effects of the Bill on the jurisdiction of the Supreme Courts. It seemed to him that this point might be more appropriately considered hereafter, if the Bill should itself be allowed to go to a Committee after being read a second time. He would only remark at present, with reference to what had fallen from the Honorable and learned Judge, as to the impropriety of extending this punishment to offences of a trivial nature, such as thefts, &c., that, as regarded the Presidency Towns at least, the punishment was already applicable to petty thefts under a Section in the Municipal Police Act of 1856, which Section had been re-enacted by the Council within the last few weeks. In a Bill, as to which it had only this day been intimated to the Council that His Excellency the Governor-General had just given his assent to it.

With regard to the Bill now before the Council no one could wonder that it should meet with acceptance every where, and, indeed, if Members of this Council were at liberty to be guided in such a matter, he would not say by their own feelings, but by their own ill-conceived notions of what was abstractedly desirable, he should hardly imagine that there would be much difference of opinion on the subject. But, in point of fact, the question with which this Bill proposed to

deal was altogether a question of practical experience; and when a discussion took place some time ago in this Council, which led to the appointment, by the Council, of a Committee to prepare a Bill on this subject, it was repeatedly stated, as the Honorable and learned Judge would remember, that, although it was most desirable that this punishment should not form part of the Penal Code—should not be permanently incorporated into that great settled body of Penal law for India—nevertheless, that it was not possible at once and altogether to dispense with it, without disregarding the practical judgments of experienced public men, to an extent which could not be justified. Such being the case, it seemed to him (Mr. Erskine) that the objects which the framers of this Bill had to secure, as far as possible, were primarily these; to bring into harmony the extremely discordant practice of different Presidencies and Provinces in India; to place proper restrictions on the use of this punishment every where; to dispense with it, whenever that could be done, without running counter to the opinions of those who were immediately responsible for the Criminal administration of the country; and by these means to prepare this whole question for a more complete and more satisfactory solution at, we might hope, no very distant period. Even in this point of view, however, the Honorable and learned Judge did not seem to be satisfied with this Bill. He said that it had been framed on no fixed principles. Now, without professing to find in this Bill any precise scientific arrangement, it did seem to him that a reference to the offences quoted in it would suggest that they had not been selected without a certain method. They seemed all to distribute themselves into a very few classes, in connection with each of which the opinions of experienced Officers in different parts of the country were known to be strongly in favor of the retention of this punishment. The first class of offences to which he referred included thefts, robberies, and petty burglaries. Petty thefts, as he had already reminded his Honorable and learned friend, were even now punishable in this way; and if this Bill proposed to extend the same punishment to similar offences of a somewhat graver character, an explanation of this was to be found in the fact that Criminals of this class, in the Mofussil, were often mere youths—often belonged to tribes of almost hereditary thieves,—and if removed from their native jungles and hills, to be shut up in our jails in the plains, were too apt to languish and die there. Another class of offences included only two or three crimes selected from the sixteenth Chapter of the Penal Code. They all indicated great brutality in the perpetrators. And he thought the Honorable and learned Judge would agree with him that, if in any case this punishment could be inflicted without specially shocking the moral sense of a community, it must be in cases like these. The offences included under the third and last class differed, no doubt, considerably from those just mentioned. They were such crimes as perjury and personation, forgery and criminal receipt of stolen goods. They had all at least this in common, that they were not often committed from any mere sudden access of passion, but were generally done deliberately, were often habitually practised, and sometimes were engaged in almost professionally, especially in this country. These were the classes of offences with which this Bill proposed to deal; and he would only add, with reference to the statement of the Honorable and learned Judge, that the Bill would re-enact all the provisions relative to this punishment in existing Regulations; that, at all events in the Presidency with which he was more immediately concerned, this Bill might truly be described as a Bill for abolishing the punishment of flogging in a variety of cases, and for restricting it in many. It went indeed farther in that direction, he apprehended, than would be approved by many able Officers in Western India. He trusted, however, that, if passed, it would, in practice, be productive only of good results; and would, indeed, be

only the first step towards a larger measure of reform, to be undertaken hereafter, whenever experience might show that it could be undertaken with safety.

THE VICE-PRESIDENT said, if this Bill depended merely with reference to the punishment of Europeans in the Supreme Courts, he thought it would be wholly unnecessary to pass it, for the law which was now administered in the Supreme Court authorized the punishment of flogging. Section 21 of the 9th Geo. IV. c. 74, which was the Criminal law administered in the Supreme Court, provided as follows :—

"And be it enacted that every person convicted of any felony not punishable with death shall be punished in the manner prescribed by the Statute or Statutes specially relating to such felony; and that every person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the Court, to be transported to such place as such Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, *and if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit), in addition to such imprisonment.*

Then there were several Sections which provided for different offences, and among them larceny as well as the offence of passing bad coin. Under the English law, however, the punishment of flogging had been substantially abolished; that is, it had never been carried into effect, except in certain cases. For instance, the English Consolidation Act, on the principle of which the 9th Geo. IV. c. 74 was based, also authorized the punishment of whipping in like manner as the 9th Geo. IV. But practically in England, as here, the power was seldom used. The English law, therefore, already authorized the punishment of flogging, and if the present Bill was to be applied to the Supreme Courts, it would, as he had before stated, be wholly unnecessary.

But we had to deal with various classes of persons, who were liable to be tried by Courts other than the Supreme Courts. We had been told by the Officers in the North-Western Provinces, Punjab, Oude, and other places, that the punishment of flogging was necessary in some cases. It would, no doubt, be a retrograde measure in places where it was now abolished. But the question was, whether it should be abolished in those places where it was now permitted, and where the local Officers, who were better able to judge in the matter than he was, had recommended its retention. If the Bill should pass the second reading, and be referred to a Select Committee, it would be published for general information, and would then elicit the opinions of local Officers from all parts of the country. The Committee would then have the opportunity of determining to what cases flogging should be applied, and in what cases it might be dispensed with.

To the particular cases referred to in the Bill, as it now stood, he did not think any reasonable objection could be taken. The offences first enumerated were: intentionally giving or fabricating false evidence, giving or fabricating false evidence with intent to procure conviction of a capital offence or conviction of an offence punishable with transportation or imprisonment, assaulting or using criminal force to a woman with intent to outrage her modesty, rape, and unnatural offences—all which were classes of cases to which he thought the punishment of flogging ought to be applied.

The Bill then proposed to provide the punishment of flogging in cases of theft, theft in a building, tent, or vessel, and theft under certain other circumstances, as well as extortion by threat of accusation of an offence punishable with death or transportation; and if an offence deserved the punishment of flogging, that last mentioned certainly did. Then there were robbery, dishonestly receiving and habitually dealing in stolen property, and lurking house trespass.

Another class of cases provided for in the Bill was forgery, forgery of a record of a Court of Justice or of a public register of births, power of

storing, &c. He rather thought that, under the English law, forgery was not one of the cases to which flogging was applied.

It appeared to him that the question was not merely whether this was or was not a retrograde measure, but whether, when the Penal Code was to come in force, the punishment of flogging ought to be totally abolished. He, for one, did not think that it could at present be so abolished. Upon the whole, therefore, he was in favor of the motion for the second reading of this Bill, and would leave it to the Select Committee to propose such amendments therein as they might think necessary, after consideration of the information and opinions which might be laid before them on the publication of the Bill.

Mr. HARINGTON said, the remarks of the Honorable and learned Judge opposite (Sir Charles Jackson) left it doubtful whether it was his intention to vote against the Motion for the second reading of this Bill. But if such was not the Honorable and learned Judge's intention, he (Mr. Harington) would willingly promise him that, when the Bill got into Committee, any suggestions that he might make for the improvement of the Bill, or any amendments that he might think right to propose, should receive the fullest consideration. In the remarks with which he (Mr. Harington) prefaced the Motion for the first reading of the Bill, he stated at some length the views which he himself entertained on the question of flogging as a punishment for criminal offences, and he also explained the considerations by which the Select Committee, to whom was entrusted the task of preparing a Bill in connection with that question, had been influenced in framing the Bill before the Council. He had little, if anything, to add to those remarks on the present occasion. The Honorable and learned Judge complained both of the Bill prepared by the Select Committee, and of the report made by them, and declared that he was unable to discover in either of these papers the principle on which the Select Committee had acted or any principle defining the class of cases to which the Bill was intended to apply. But he (Mr. Harington) thought there was no ground for this complaint. The Honorable and learned Judge would allow the punishment of flogging in cases of rape and unnatural offences, or where, as in such cases, the offence committed displayed a peculiarly demoralized mind, and he (Mr. Harington) supposed that, if the Select Committee had confined the Bill prepared by them to cases such as those mentioned by the Honorable and learned Judge, the Honorable and learned Judge would have admitted that there was a principle in the Bill. Now the Select Committee, in framing the present Bill, had proceeded on the same principle on which the Honorable and learned Judge would have proceeded; only they proposed to go a little farther than the Honorable and learned Judge, and to extend the principle of the Bill to offences other than those mentioned by the Honorable and learned Judge, for which they considered the punishment of flogging a suitable punishment. Whether the Select Committee were right or wrong in their selection, the principle on which they had acted, as declared in his introductory remarks, was to select for corporal punishment those offences, the punishment of which carried with it a greater degree of social and moral degradation than was the case regarded the punishment of other offences. The offences, on a conviction of which the Select Committee considered that corporal punishment might be awarded, were specified in the Bill. The Honorable and learned Judge declared some of these offences to be most trivial, but he (Mr. Harington) did not think that this could fairly be considered the character of any of them, in so far as the question under discussion was concerne

The next charge which the Honorable and learned Judge had brought against the Bill was that it was of a retrograde character and that it proceeded therefore in a wrong direction, and he particularly noticed the appli-

cation of the Bill to Europeans as well as to Natives. He (Mr. Harington) did not think that the Bill was obnoxious to this charge. The Honorable Member for Bombay had shown very clearly that, in so far as the Presidency would be affected by the operation of the Bill, its character was progressive, not retrogressive. The same remark, he believed, was equally applicable to the Presidency of Madras. It also applied to the Punjab and Oude. The Honorable and learned Judge had admitted that in very many cases the punishment of flogging might be inflicted on Europeans.

SIR CHARLES JACKSON here explained that, while he had admitted that the law was so, he had also stated that, although he had been twelve years in the country, he knew of no instance in which the punishment of flogging had been inflicted on a European.

MR. HARINGTON resumed—The present Bill would make no alteration in the law in this respect. It did not say that every European or other person convicted of any of the offences specified in the Bill should be flogged, but merely declared that the punishment of flogging might be awarded for those offences, which was just what the existing law did. The Honorable and learned Judge had not specified the offences for which, under the Act of George the Fourth, corporal punishment might be awarded, whoever was the offender. The Honorable and learned Vice-President had, however, pointed out that, under the Act referred to, most of the offences described in the Bill were punishable with flogging, and forgery was the only one of those offences which he had mentioned as not so punishable.

THE VICE-PRESIDENT begged, in correction of what he had before stated, to explain that, on referring to the 9th Geo. IV, c. 74, he found that forgery was one of the cases in which flogging might be awarded.

MR. HARINGTON proceeded to observe that this made his case all the stronger, and furnished an additional argument in favor of the present Bill as showing that even in so far as Europeans were concerned, it was not of a retrograde character. It must be borne in mind that the Bill proposed no alteration as to the Tribunals by which offences were to be tried. Offences punishable with corporal punishment by the Supreme Court would continue to be tried by that Court, any thing in the present Bill notwithstanding. It was not alleged that the discretionary power vested in the Judges of the Supreme Court in respect to the punishment of flogging had been abused, and there was no ground for apprehension that it might be abused under the present Bill. The same Judges who administered the existing law would administer the law now proposed to be introduced. In the Presidency of Bengal, beyond the limits of the Town of Calcutta or in what were called the Regulation Provinces, corporal punishment had, as he had mentioned on a former occasion, been abolished by a law which was passed so far back as the year 1834, and in so far therefore as the Lower and Upper Provinces of the Presidency of Bengal were concerned, it must be admitted that the present Bill was retrogressive; but while the law to which he had just referred abolished corporal punishment in some parts of the Bengal Presidency, it left it to be administered in the Presidencies of Madras and Bombay, and in the three Presidency Towns, and as he had previously stated the partial abolition of the punishment in those parts of the country to which the abolition extended, had always been considered impolitic and of questionable propriety. He heartily concurred in what had fallen from the Honorable and learned Judge as to the duty which rested upon them in legislating for this country, not to reduce the European to the level of the Native, but to raise the Native to the level of the European. Unfortunately, however, this was not always possible in the case of the Natives and they often found themselves pre-

[illegible] in passing laws in this country, which, if they had only the more civilized class to legislate for, they would very readily adopt. He quite agreed with the Honorable and learned Vice-President that, if the Presidency Towns alone had now to be considered, there would be no necessity for the present Bill; but they were legislating for all India, and for the numerous races and classes scattered throughout the country, in respect to a great portion of whom it seemed to be generally admitted that corporal punishment would, in its effects, not be more demoralizing than imprisonment in a Criminal jail, and that in a very great many cases it would be not only a more humane but a more effectual punishment. With regard to what had fallen from the Honorable and learned Judge as to the expediency of confining corporal punishment to second and subsequent convictions, he would only observe that the object aimed at in the present Bill was as much as possible to save certain classes of offenders from the contaminating influences of a Criminal jail, from which those who were confined therein generally came out worse characters than when they entered the jail. If the suggestion of the Honorable and learned Judge were adopted, the effect would be that a person on his first conviction would be subjected to the pernicious influences just mentioned, and, on a second conviction, he would be flogged in order that he might not again be sent to jail. These were the only remarks with which he would trouble the Council; but he must express a hope that the Bill would be allowed to be read a second time. This would be followed by its publication, which would give the local authorities and the public the opportunity of expressing their opinions on the various provisions of the Bill, and the opinions thus received would be considered in Committee, and any alterations could then be made in the Bill, which might be deemed advisable.

Mr. Harington.

The question being put, the Council divided :—

Ayes 7.	*No* 1.
Mr. Erskine.	Sir Charles Jackson.
Mr. Sconce.	
Mr. Forbes.	
Mr. Harington.	
Mr. Beadon.	
Sir Bartle Frere.	
The Vice-President.	

So the Motion was carried and the Bill read a second time.

CIVIL PROCEDURE.

The Order of the Day being read for the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)"—

MR. HARINGTON said, in moving the second reading of this Bill, he had to express regret for the delay that had taken place in the printing and circulating of the Bill and the Statement of objects and reasons. He believed that these papers had not reached Honorable Members until late the evening before last. The delay in their circulation had arisen partly from the holidays and partly from the quantity of other work of a more pressing nature in the hands of the printer. He would only add that, if any Honorable Member desired further time to consider the Bill before passing a vote on the Motion for the second reading, he was very willing to defer his Motion until the next Meeting of the Council.

At the suggestion of the Vice-President, the Motion was accordingly postponed.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select

Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a verbal amendment in Section II; and the Council having resumed its sitting, the Bill was reported.

ADMINISTRATION OF JUSTICE IN THE SUPREME COURT (BOMBAY).

The Order of the Day being read for Mr. Erskine to move a suspension of the Standing Orders, to enable him to carry through its remaining stages forthwith the Bill "for the improvement of the administration of justice and despatch of business in the Supreme Court of Judicature in Bombay"—

MR. ERSKINE said that he had explained at the last Meeting of the Council that this Bill would not be fully efficacious, unless it were at once passed through its remaining stages; and as it had been framed by the Judges themselves at Bombay, and recommended by the local Government there, and had received the sanction of the Supreme Government, and been quite unopposed in the Council, he apprehended there could now be no objection to the suspension of the Standing Orders, with a view to the Bill being at once proceeded with. He should therefore make the Motion of which he had given notice.

SIR CHARLES JACKSON seconded the Motion, which was put and carried.

MR. ERSKINE then moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MR. ERSKINE moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. ERSKINE moved that Mr. Beadon be requested to take the Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

FLOGGING.

MR. HARINGTON moved that the Bill "to provide for the punishment of flogging in certain cases" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, Mr. Erskine, Sir Charles Jackson, and the Mover.

Agreed to.

STAGE CARRIAGES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for licensing and regulating Stage Carriages."

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES gave notice that he would, on Saturday next, move the first reading of a Bill to introduce the Municipal Acts into the Towns of Moulmein, Rangoon, Tavoy, and Mergui.

The Council adjourned.

Saturday, January 12, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harington, Esq.,	Hon'ble Sir C. R. M. Jackson.
H. Forbes, Esq.,	

MUNICIPAL ASSESSMENT (RANGOON, &c.).

MR. FORBES moved the first reading of a Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the town and suburbs of Rangoon, and to the towns of Moulmein, Tavoy, and Mergui, and for

appointing Municipal Commissioners, and for levying rates and taxes in the said Towns." He said that, before he proceeded to introduce to the Council the Bill of which he had given notice, he wished to say one word to explain how the Bill came to be laid before the Council by a Member who had so little personal connection with the part of the Empire to which it referred as he had. The administration of our possessions in Burmah was subject to the immediate control of the Supreme Government of India, and, under ordinary circumstances, it was probable that Legislative measures connected with Burmah would be introduced by a Member of Government; but we all knew how short-handed the Government had lately been, and were, he was sure, more inclined to wonder how ordinary current business had been done, than to feel surprised that extraordinary duties had not been undertaken. Failing a Member of the Executive Government, legislation for Burmah would perhaps naturally devolve on the Member for Bengal; but we all knew, and we all regretted to know, that that Honorable gentleman was soon about to resign his seat in this assembly, and as he would not be here to see this measure through all its several stages, it was not considered expedient to lay upon him the duty of introducing it. It was under the circumstances to which he had now referred, that the papers connected with the Bill were sent to him by the Honorable Member of Government opposite, with a request that he would prepare and introduce a Bill founded on them. He (Mr. Forbes) had made this explanation, in order that he might not be supposed to have undertaken, unasked, a duty which would be more fitly as it would be more ably performed by others.

There was nothing very new in the Bill which he was now to introduce. Municipal laws had already been enacted for the Presidency Towns and for the Straits Settlements, and all that was necessary was to extend to Rangoon and the Towns in the Martaban and Tenasserim Provinces such parts of those Acts as were applicable, and to introduce one or two special provisions to provide for special circumstances. These would be more properly considered in Committee, if the Council should allow the Bill to reach that stage; and the only point to which he need now refer, was the omission, as regarded Rangoon, of the first twelve Sections of Act XXV of 1856, which prescribed the mode of assessing the Municipal rate upon the annual value of lands and houses. This could not be applied to Rangoon, because, when the building lots were sold by Government, they were sold, subject to a condition that each lot should be assessed according to the class that it was in, and not according to its annual value, and this condition must, of course, be adhered to. The Bill had been drawn to meet this necessity, and it was the only point which he thought it necessary to detain the Council by referring to particularly.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. HARINGTON moved the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Motion was carried, and the Bill read a second time.

PORT-DUES (CONCAN).

MR. ERSKINE moved the second reading of the Bill "for the levy of Port-dues in the Ports of the Concan."

The Motion was carried, and the Bill read a second time.

MERCHANT SEAMEN.

MR. BEADON moved the second reading of the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)."

The Motion was carried, and the Bill read a second time.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

PEPPER-DUTY (COCHIN).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to provide for the collection of Duty of Customs on Pepper exported by Sea from the British Port of Cochin."

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that Mr. Beadon be requested to take the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON moved that the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, Mr. Erskine, and the Mover.

Agreed to.

REPEAL OF ACTS AND REGULATIONS.

MR. HARINGTON moved that Mr. Erskine be added to the Select Committee on the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter."

Agreed to.

MERCHANT SEAMEN.

MR. BEADON moved that the Bill to "extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, Mr. Erskine, and the Mover.

Agreed to.

PORT-DUES (CONCAN).

MR. ERSKINE moved that the Bill "for the levy of Port-dues in the Ports of the Concan" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

SIR CHARLES JACKSON moved that the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a fund for Municipal purposes in the town of Bombay)" be referred back to a Select Committee consisting of Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

PENAL RECOGNIZANCES.

MR. SCONCE moved that the Select Committee on the Bill "for the better prevention of offences against the public tranquillity, and to amend the law regarding the taking of bonds for keeping the peace" be discharged. In doing so, he said that the principal portion of this Bill and the object which led him to apply for the reappointment of the Select Committee had been accomplished by the passing of the Penal Code, and the remainder would be provided for by the Code of Criminal Procedure now passing through the Council.

Agreed to.

The Council adjourned.

Saturday, January 19, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble S. Laing,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq.,
and
Hon'ble Sir C. R. M. Jackson.

ADMINISTRATION OF JUSTICE IN THE SUPREME COURT (BOMBAY).

The VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for the improvement of the administration of justice and despatch of business in the Supreme Court of Judicature in Bombay."

FINANCES OF INDIA.

The CLERK presented to the Council a Petition from the Bombay Association, relative to the finances of India.

MR. ERSKINE moved that the Petition be printed.

Agreed to.

RECOVERY OF RENTS.

THE CLERK also presented to the Council a Petition from Khosal Mundul and others, of Mouzah Patturghatta Govindpoor, in Zillah Nuddea, praying that Collectors of Revenue may be empowered to receive money tendered by ryots on account of rents due by them to zemindars and others entitled to receive the same.

MR. SCONCE moved that the Petition be printed.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.).

THE CLERK reported to the Council that he had received from the Foreign Department a copy of a further communication from the Commissioner of Pegu, relative to the passing of a Municipal Act for the Town of Rangoon.

MR. FORBES moved that the communication be printed.

Agreed to.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. FORBES presented the Report of the Select Committee on the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George."

PORT BLAIR.

MR. SCONCE moved the first reading of a Bill "to regulate the administration of affairs at Port Blair." He said that, at this early stage of our connection with the Andaman Islands, the Council probably was hardly prepared to entertain any proposition to legislate for that part of the world. As we all knew, Port Blair was mainly distinguished as the place of residence for convicts who had placed themselves beyond the pale of the law, and it might be doubted whether the other inhabitants of the Islands, the Aborigines, could properly furnish occasion for legislative interference. But nevertheless occasion had arisen for preparing an enactment in connection with that Settlement, and he hoped he should satisfy the Council that the Bill which he was now about to introduce, was not one unworthy of their consideration.

It had lately been considered desirable that free settlers should be encouraged to reside at the Settlement of Port Blair. In one sense, therefore, and that a sense very acceptable to his mind, considering the character of the Settlement and the circumstance that an Officer invested with a kind of autocratic power was there located, it might be said that it was found hard to live in an atmosphere where liberty was so much restrained, and that the Superintendent longed to be associated with men who were free like himself and subject to the same congenial associations. In proposing that parties should be permitted to settle as free residents in Port Blair, it must be understood that they should reside there under

some restrictions. The primary object of the Settlement being to secure convicts sentenced to transportation, it was expedient that those who resorted to the Settlement should live under the surveillance of the official authorities there, and be prevented from interfering with the discipline of the convict establishment, or in any way from facilitating the escape of the convicts.

The Bill which he had the honor to propose consisted of seventeen Sections. The first portion of the Bill would regulate the occupancy of land by free settlers. He (Mr. Sconce) proposed to declare that the whole of the land should be vested absolutely in the Government, and that no possession of land should be acquired, except by an instrument in writing executed by the Superintendent.

Then, again, from the 1st of May next, the Penal Code would take effect throughout that Settlement as it would everywhere else. It seemed desirable, therefore, to establish a tribunal there for the investigation and trial of whatever offences the Penal Code would take cognizance of. Whether we looked to the protection of the free settlers, or to the necessity of adequately providing for the administration of justice as respected the convicts themselves, it seemed to him to be essentially necessary that some legal authority should be constituted in the Settlement. As he understood at this moment, the only written law by which the conduct of the proceedings of the Superintendent of Port Blair was regulated, was Act XVI of 1840, which was entitled "An Act concerning the management of convicts transported to places within the territories of the East India Company." So far, therefore, as respected the discipline to be exercised towards the transported convicts, that law contained ample provision. But he apprehended that it was desirable to follow up the enactment of 1840, and to provide tribunals for the trial of offences, such as murder, that might be committed by the convicts. A convict might commit an offence against another convict, or against a free settler; or offences might be perpetrated against the Aborigines, or by one free settler against another. In any case the necessity was apparent for the constitution of legal tribunals for the investigation and trial of offences, and the Bill accordingly made provision for this purpose.

Another portion of the Bill applied to communications with the shore by vessels for the landing of passengers or goods, and proposed rules for regulating that communication. Provision was likewise made in respect of vessels leaving the Port, so that they should afford no opportunity for convicts escaping from the Island. The Penal Code declared the unlawful return of convicts from transportation to be an offence, and he apprehended that any one who facilitated the escape of a convict would be punishable as having abetted that offence. So far therefore as the offence was concerned, the Penal Code made ample provision. But it was necessary to pass a law creating the Court by which the offence should be tried.

The latter portion of the Bill provided for the granting of licenses to persons who might choose to reside in the Settlement. The conditions of the license were not included in the Bill, but it would be left to the discretion of the Government to prescribe what those conditions should be.

With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

MALACCA LANDS.

MR. SCONCE moved the first reading of a Bill "to regulate the occupation of land in the Settlement of Malacca." He said, he need hardly tell the Council the position of the somewhat remote Settlement regarding which he was now about to propose to legislate. It was well known that the Settlement of Malacca was situated in the Straits from which it derived its name. This Settlement was acquired by cession from the Dutch, under a treaty executed in 1824. From March 1825 possession of the Settle-

ment was acquired by the East India Company on the part of the British Government. The Settlement was by no means large in extent; but, if he might judge by the representations which had been made from time to time by those who were best qualified to speak on the subject, it was a Settlement comprising land of the utmost fertility, and offering peculiar advantages to persons desirous of devoting their industry and capital to the development of its resources. The Settlement was no more than forty miles in length, and upon an average about twenty-five miles in breadth, containing somewhat under one thousand square miles. The Settlement included two Districts, one of which was Malacca, and the other was the District of Naning. Both were acquired at the same time, though there was a great difference observable between them in the nature of the tenure under which the land of the two districts was occupied. It was found that the land of Malacca Proper had been all assigned, with the restriction which he would hereafter mention, to certain grantees under some supposed titles executed with the Dutch. The grants were assumed to be a hundred years old, more or less, and the purport of them was, not absolutely to give the grantees a title to the land, but to assign to them the right vested in Government to levy what was considered to be the customary share of the produce, namely, one-tenth, which was due annually to the Sovereign. He did not find that any exact investigation had ever been made as to the legal validity of these grants. A good deal of doubt, it would seem from the papers before him, had been thrown on this [illegible] but that question was quite immaterial to the present subject. Mr. Fullerton, who was the Governor of the Malacca Settlement in 1826-27, put himself in communication with the grantees; and under the impression that it was important, if possible, to recover the grants, so as to enable the Government to deal with the land in the way they thought most advantageous for promoting the prosperity of the Settlement, Mr. Fullerton redeemed the grants on this understanding. He undertook to pay the grantees rather more than the full annual value of the land. That is, he agreed to pay in money the full equivalent to the tenth of the produce which they had been in the habit of collecting. Almost all the grantees consented to this arrangement. From a Minute recorded by Mr. Fullerton in 1829, he (Mr. Sconce) found that the total sum, which he had bound himself to pay, and on receiving which the grantees bound themselves to relinquish their grants, was 16,270 Sicca Rupees; while there were, as he understood, four or five grantees who did not accept Mr. Fullerton's terms. The whole Settlement had never been surveyed and measured with any great exactitude, and he was therefore unable to say what was the precise extent of land which had been redeemed. On the whole, the land thus acquired seemed to have fallen little short of four hundred square miles; and on the other hand, it was now estimated that the land situated within the grants of the parties who did not surrender their tenures, did not exceed twenty-four square miles. So far, therefore, as the latter was concerned, as he had already stated, it was of no importance, and bore no proportion to the quantity of land actually recovered by the Government. The object of the arrangement made by Mr. Fullerton, therefore, so far as regarded the District of Malacca, was to put Government into possession of all the land as proprietors of the soil, to enable it to levy the usual tenth on the produce of such portion as might be occupied, and to do as it pleased with the waste land.

The District of Naning was not so held. It seemed to have been occupied by cultivators subject to the management of Native Chiefs, who were liable to contribute one-tenth of the produce to Government. But, unhappily, some disagreement arose, as too often did arise, between the assertion made of the authority of Government, and the rights to which the people con-

sidered themselves entitled. Hostilities ensued and the result was, that many lives were lost, and many lakhs spent, until 1832, when these hostilities were brought to a close. Ever since that time the proprietary right of Government had been invariably asserted and allowed. Thus, in both districts the position of Government towards the land came eventually to be the same. In Naning and in Malacca, by virtue of the redemption of the Grants, the Government was entitled to levy one-tenth of the produce of cultivated land and to dispose of the unappropriated waste land in any manner that should seem best calculated to promote its cultivation. Nevertheless, the local authorities had hesitated to give effect to the absolute right acquired over the Malacca land. It happened that, in the redemption deeds, a Clause was added that, if ever the British Government should re-transfer the Settlement to another State, the grantees should be replaced in their original position. Now it appeared to him (Mr. Sconce) that this was tantamount to saying that, so long as the Sun and Moon endured, the right of Government to deal with the land should continue. He could not tell with what view the Clause in question had been introduced. Possibly in those days, when the recollection of the restoration of Java and Sumatra was fresh, it might have been thought possible that Malacca also would be given up. But he felt, and he was sure the Council would agree with him, that no such utterly improbable contingency should be allowed to defeat the good government of the Settlement. The whole land comprised within the released grants had absolutely lapsed to Government, and we need not hesitate to assert this totally undisputed right. The proposition which, from time to time, had come up from the Governor of the Straits was to declare the right of Government in the land, and accordingly it was the first object of this Bill so to do. But the Bill at the same time did more. It declared also the right of the parties by whom, for annual money payments, the grants had been surrendered, to receive in perpetuity these annuities. In this respect he proposed to create no new obligations. These annuities had been paid for thirty-two years, and we had no choice but to perpetuate the payment. It seemed to him, however, that it might be acceptable both to the annuitants and to the Government that the annuities should be bought up, and the claims which the annuitants had upon the Government be thereby at once and for ever discharged. Accordingly a provision to buy up the annuities was included in the Bill. He would repeat that he did not propose to interfere with the land comprised within the unredeemed grants. These estates, as he had already shown, were small in extent, and he thought there would be no advantage in attempting to recover the land for Government. The immediate effect of the proposal now made would be to enable the local Government to deal freely with the land of the released estates. Hitherto, under the supposition that they could not give a perfectly good title to any land taken, they had felt their hands tied. The Bill would so far get rid of that difficulty. But another important object was to change the terms upon which waste land might be conferred on persons desirous to clear and cultivate it. As the law stood, it was complained that Government could do no more than lease the waste land, and he therefore proposed to empower the Government, for such consideration as might be agreed upon, to transfer the land of the Settlement upon a fee-simple title. He believed that the law that required the land to be leased was Act XVI of 1839. He had not seen this Act noticed in any of the papers to which he had access, but the fifth Section of this law, which was as follows, seemed to show upon what policy alone waste land could be assigned :—

"And it is hereby enacted that after the date on which this Act shall be in force in the Settlements aforesaid, any person desirous of clearing and occupying waste and forest lands for the purposes of agriculture, shall make

application to the Collector of Land Revenue, who is hereby authorized to measure and assess the land, and to grant a lease for the same in such manner, and under such conditions, as the Governor of Bengal may from time to time prescribe. And if, by reason of the density of the jungle or other obstacles, it should be found impracticable to cause immediate measurement to be made of land so to be leased, it shall be competent to the Collector to issue to such applicant a permit or written authority, of which the number, date, and all essential particulars shall be entered in a Register to be kept for that purpose, to clear and occupy such land, subject to the conditions on which a lease would have been granted. And on all land occupied under any such permit so issued, it shall be lawful for the Collector to demand and enforce the payment of rent in like manner as if a regular lease had been granted. And the Collector shall, with all practicable despatch, cause all land so occupied to be measured, and after such measurement, the permit shall be called in and cancelled, and in lieu thereof, a lease shall be issued, the term of which shall commence from the date of the permit: Provided, however, that it shall not be competent to a Collector to grant any lease of lands for a term exceeding twenty years, renewable on such conditions as the Governor of Bengal may direct for a further period of thirty years."

Clearly then under the provisions of Act XVI of 1839 no waste land could be granted otherwise than upon a twenty years' lease, renewable for a further period of thirty years, subject, however, to such conditions as the Government might impose. Against this limitation of the power to deal with the land, the late Governor, Mr. Blundell, made repeated remonstrances, and he (Mr. Sconce) would, with the permission of the Council, read an extract of a letter written by that Gentleman. It was as follows:—

"In the other stations in the Straits, forest and waste land is sold outright to individuals at prices varying from 5 to 8 Rupees per acre, and becomes the absolute property of the purchasers. In this manner the Government derive a revenue from the land, while speculators are induced to lay out their capital in bringing the land under cultivation. In Malacca no such benefit can accrue, either to the country or to the revenue, and my object in pressing this subject on the attention of the Legislative Council, is to obtain the means of benefiting one of the Settlements under the Straits Administration. In the Settlements of Penang and Singapore, land being once sold, is free from all taxation, quit rent, or other Government demand. In Malacca, land is subject to a Government demand of one-tenth of the produce. The effect of enforcing this right of demand has been most injurious to the interests of the Province, and the knowledge of the existence of such a right, and the possibility of its being enforced, naturally deter Capitalists from embarking in agricultural speculations in Malacca. No man will form spice, sugar, or pepper plantations, and lay out his money in mills and drying houses, with a demand of ten per cent. on his produce hanging over him, and so long as this right exists, unknown as it is in the other Settlements under this Government, Malacca can never recover from its present poverty and insignificance."

He would not trouble the Council by reading any further papers on this point. The object simply was to enable the local Government to dispose of the land by an out-and-out sale, and to amend the law in so far as it now withheld that power.

There was only one other matter to which he wished to advert, and for which it seemed necessary to make some provision in this Bill. Twenty years ago or more an attempt had been made to improve the tenure of land in Malacca by commuting the payment of one-tenth share of the produce payable in kind into an equivalent money amount, and certainly he had no objection to offer to the principle of that arrangement. But it appeared that, in giving effect to the commutation, much confusion had resulted. The land supposed to be included within these commutation leases had not been measured or surveyed, and it appeared that the same land was claimed as given to different persons. He could not do better than read to the Council an extract of a letter written three or four years ago by the late Recorder, Sir R. McCausland, in which the evil referred to was fully described:—

"There is, however, a matter of much greater importance to the well-being and prosperity of that Settlement, namely, the state of land tenures. Numbers of persons, Europeans, Natives, and Chinese, are ready and willing to invest their capital in the further cultivation of the land, and working of the tin mines, if they could only obtain titles that would ensure them against disturbance for reasonable terms of years.

"Several cases came before the Court, at its civil sittings, in which it appeared that from the inefficiency of the native surveyors, who were employed at the time of the issuing of the

Commutation Deeds from the Land Office in Malacca, in the year 1837 and the following years, the same lands were included in the plans annexed to the Commutation Deeds granted to different holders, and the confusion of boundaries which had been thus produced, has led to the most serious inconvenience in the transfer of the lands, the titles to which, as demonstrated by the East India Company's Deed and recorded in the Land Office, being thus of little or no real value. The settlement of this question demands immediate attention, for in addition to the uncertainty of title, the confusion of the boundaries is apt to lead to differences, which end in assaults and breaches of the public peace. Nor is it among themselves alone, that the landholders will be content to litigate; they will seek for an indemnity against the losses they incur at the hands of the East India Company by reason of the inaccuracy of their Commutation Deeds; besides, that there must be a considerable present loss to the income of the East India Company by reason of the large quantity of land which is held throughout the Settlement, upon no other title than bare occupancy without payment of any Commutation rent, or otherwise, to any person whomsoever."

To meet this difficulty, he (Mr. Scott) proposed to authorize a survey of all the land already held under leases, and in case of dispute to permit a summary adjudication as to conflicting titles, subject to review in the ordinary Court of judicature.

With these observations he begged to move that the Bill be read a first time.

The Bill was read a first time.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES moved that the Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and taxes in the said Towns" be read a second time.

The Motion was carried, and the Bill read a second time.

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army" be read a second time.

The Motion was carried, and the Bill read a second time.

PEPPER DUTY (COCHIN).

MR. FORBES moved that the Bill "to provide for the collection of Duty of Customs on Pepper exported by sea from the British Port of Cochin" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. FORBES moved that Mr. Laing be requested to take the Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES moved that the Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and taxes in the said Towns" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, and the Mover.

Agreed to.

PAPER CURRENCY.

SIR BARTLE FRERE said, he believed there could be but one opinion among the Members of this Council as to the desirableness of having Mr. Laing on the Select Committee on the Bill "to provide for a Government Paper Currency." But that Committee already consisted of five Members, and the Standing Orders did not allow of more than five Members being appointed to a Select Committee. He (Sir Bartle Frere) therefore proposed that the Standing Orders be suspended, to enable him to move that Mr. Laing be added to the Select Committee on that Bill.

MR. HARINGTON seconded the Motion, which was put and carried.

SIR BARTLE FRERE then moved that Mr. [illegible] be added to the Select Committee on the above Bill.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that the Bill "to make certain amendments in the Articles of War for the Government of Native Officers and Soldiers in Her Majesty's Indian Army" be referred to a Select Committee consisting of Sir Charles [illegible], Mr. Erskine, and the Mover, with an instruction to present their Report within six weeks.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES moved that the communication from the Foreign Department which was reported this day, be referred to the Select Committee on the Bill "for extending certain provisions of Acts XIV and XXV of 1856, to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners, and for levying rates and taxes in the said Towns."

Agreed to.

The Council adjourned.

Saturday, January 26, 1861.

PRESENT:

The Hon. the Chief Justice, *Vice-President*, and C. J. Erskine, Esq.

No other Member of the Council was this day present, and the Vice-President adjourned the Council till Saturday morning, the 2nd February, at 11 o'clock.

Saturday, February 2, 1861.

PRESENT:

The Hon. Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, in the Chair.

Hon. C. Beadon, Esq., and
Hon. C. J. Erskine, Esq.,

LANDS FOR PUBLIC PURPOSES.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK presented to the Council a Petition of the British Indian Association, concerning the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a license."

MR. LAING moved that the Petition be printed.

Agreed to.

STATE PRISONERS.

THE CLERK presented to the Council a Petition of the Bombay Association against the continuance of Act III of 1858 (to amend the law relating to the arrest and detention of State Prisoners).

MR. ERSKINE moved that the Petition be printed.

Agreed to.

LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK reported to the Council that he had received a communication from the Commissioner of Pegu, relative to the Bill "for imposing a Duty on Arts, Trades and Dealings, and to require dealers in Tobacco to take out a license."

MR. LAING moved that the communication be printed.

Agreed to.

ENGLISH PASSENGERS' ACT.

THE CLERK reported that he had received a further communication from the Home Department, relative to the question of extending the provisions of the Imperial Passengers' Act of 1855, to the carriage of Passengers from India, under the authority conveyed in Section 99 of that Act.

MR. BEADON moved that the communication be printed.

Agreed to.

PORT BLAIR.

MR. SCONCE moved the second reading of the Bill "to regulate the administration of affairs in Port Blair." The Motion was carried, and the Bill read a second time.

MALACCA LANDS.

MR. SCONCE moved the second reading of the Bill "to regulate the occupation of land in the Settlement of Malacca."

MR. ERSKINE said, he had no intention whatever to oppose the second reading of this Bill. But there were points which, on a cursory perusal, struck him as requiring explanation, and he had no doubt that the Honorable Member in charge of the Bill would be able to do it. The first was in Section III proposed to exclude under cultivators resident tenants holding lands by prescription subject to a payment to Government of one-tenth of the produce of their lands. It was possible might in this Settlement be cultivators holding by prescriptive right, and at the same time entitled to exemption from assessment; if there were any such tenants, he could see why they should thus be subjected to an assessment of one-tenth of their produce. Again the 6th Section of the Bill proposed to deprive persons of any claim, on the ground of prescriptive right or of possession, of forest or pasture land. If there were any persons who now claimed rights in any such land on the ground of prescription or immemorial possession, he did not see why such claims should be summarily barred in this way. This also therefore was a point which seemed to require some explanation.

MR. SCONCE said, the Sections of the Bill to which the Honorable Member had referred, were intended to be strictly based on Act XVI of 1839, which declared the right of Government to assess the whole land situated within the Settlement of Prince of Wales' Island, Singapore, and Malacca. That Act therefore applied to the Settlement of Malacca generally, and the exception excepted land occupied, in other words ran, by "such resident tenants of Malacca as held their lands by prescription," who so held land were by the Section "subject only to a payment to Government of one-tenth part of the produce." Except such tenants were included in the last Section of the Act, all occupants of land were subject to the law as declared in the earlier Section of the Act. The 6th Section of that Act enacted that "any person, except as is provided in the last Section of this Act," (which he, Mr. Sconce, had just read), "shall hold or occupy any land within any of the Settlements aforesaid, not under a grant or title from Government duly registered, and which land has not been declared, by competent authority, free from assessment, such land shall be liable to assessment, and shall be assessed in such manner, at such rate, and under such conditions, as the Collector acting under the instructions of the Governor of Bengal shall determine." It had been his (Mr. Sconce's) purpose, in preparing this Bill, to declare, as was declared in the Act of 1839, what was the liability of all occupants of land, other than those who held by prescription. Section III of the Act went on to declare that, "if any person, holding or occupying land in the manner set forth in the preceding Section, shall refuse to engage for or to remove from the land within one month from the date on which he shall be called upon by the Collector to enter into such engagement or to remove from it," the Collector was empowered to eject such person.

The 5th Section of the Act provided that "after the date on which this Act shall be in force in the Settlements aforesaid, any person desirous of clearing and occupying waste and jungle lands for the purposes of cultivation shall make application to the Collector," &c. So that after the passing of this Act any person desirous of applying

...is receiving that lease, he ...t occupy the land except ...y years. His (Mr. Sconce's) ...ure, in preparing this ... to protect the rights of all ...ccupants of land subject to be ...according to such rates as the ...ctor might impose. It was quite ...ible that the exception in the 2nd ...ion of the Act, reserving the rights ...occupants of land who held by ...scription, had not been distinctly ...brought out in the 3rd Section of the Bill. He had intended to reserve all such rights, as would be seen from the 13th line of the 3rd Section, where the liability was intended to be confined to Section II Act XVI of 1839. The words at the 18th line of Section III of the Bill, which declared that all other cultivators and undertenants should be liable, *as directed in Section II of the Act of* 1839, to be assessed as the Resident Councillor should determine, might probably not be considered sufficiently guarded. By the word "directed" he meant to adopt the restriction of the Section referred to, so as to exclude land declared by competent authority to be free from assessment; but if the words were not sufficiently clear upon this point, they might without objection be amended.

In all other respects, it would be observed that Section III of the Bill reserved all engagements entered into for a specific time and under specific conditions.

It had been his object to adhere to the principles of assessment as settled by Act XVI of 1839, and any doubts that existed might be cleared up in Committee, so that both the former law and the present Bill should conform to the same principles. He believed that these were the two points on which the Honorable Member for Bombay required explanation.

...ERSKINE said that apparent...ion to which the Honor... for Bengal referred ... XVI of 1839) ... desirous of ...ltivation, ... Bill seemed to refer to all forest or pasture lands, though immemorially possessed by the claimants.

MR. SCONCE resumed.—The A... of 1839 excepted all tenants occupy... land upon prescriptive titles, so th... excluding prescriptive tenants, who rights were reserved by that Act, t... whole remaining land of the settleme... became subject to the rules of asse... ment determined by the Act. Tenan... holding prescriptive tenures were spe... ally provided for, and all the land oth... wise occupied could be leased only conditions approved of by the l... authorities. As he said before, w... the Bill went before Committee, he ... no objection to the substitution of words to declare more fully than he done the meaning of the Act of 18...

SIR BARTLE FRERE said, h... not quite certain if he rightly ... stood the Honora... ble Mover of th... as to the particular object of S... VI. As he (Sir Bartle Frere) stood the case, there were in M... great quantities of waste, fore... uncultivated land... s, and the great number of squatters, w... make use of the land for p... cultivation, but wh... o, by virtu... pancy, prevented other peo... taking it up for cultivation. therefore, the objec... t of the Bil... strict that squatter... right, an... lieved that one of t... e objectio... Honorable Mover ... Bom... that Section VI of th... Bill provided for taking away ... tive right which any squa... allege by virtue of occupancy which he did not use, but also ... away the right which he migh... established to land of which he ... made use, but not for purposes of cu... tivation. He was not sure if he had correctly understood the Honorable Member for Bombay. (MR. ERSKINE —Yes.) Probably the objection might be met if the Honorable Mover of the Bill consented so to alter the tenor of the 6th Clause, and as to confine its application to those forest and waste lands of which no beneficial occupation could be alleged as conferring a prescriptive title.

MR. SCONCE said, the suggestion just made by the Honorable President was so proper in itself that he (Mr. Sconce) could have no objection to the introduction of any words to preserve existing rights. With regard to the observation respecting squatters, he could only say that, in the papers to which he had had access, he did not find any such fact asserted as that there were squatters, nor did he find any mention made of squatter right. Squatters had been spoken of as holding by a prescriptive right. Now whatever holders of land occupying upon prescriptive titles there might be in Malacca, they held under the Act of 1839, and they would in like manner hold under this Bill; so that whatever prescriptive right might at present be vested in any party, the same prescriptive right he (Mr. Sconce) now proposed to confirm. Section VI of the Bill needed from him more explanation than he had offered in proposing the Bill for the first rēading, and which he had intended, but inadvertently omitted, to offer on that occasion. That Section was in fact based on a judgment of the Supreme Court so far back as 1829, and he had within the last two days added to the papers printed as annexures to the Bill what purported to be an extract from that judgment. The extract ran as follows:—

"It was proved that, in the territory of Malacca, the owners of the soil, and the cultivators of it, are entirely distinct persons, except in and in the immediate vicinity of town; that the owners of the soil cannot eject the cultivator so long as he continues to pay him a certain portion of the produce, generally one-tenth; that the owner of the soil may sell, or otherwise dispose of his interest, without prejudice to the cultivator, and the cultivator *vice versâ*; that,"

and this, he (Mr. Sconce) thought was the most important point

"in case the cultivator allows the land to lie waste, the owner of the soil may eject him by due process of law; that the fact of lands lying uncultivated for certain periods is evidence of waste; that the periods are:

"For Paddy lands...	3	Years.
" Cocoanut and other fruit trees	3	"
" Gambier	1	"
" Pepper	1	" "

In this Act, however, instead of going into details of one or three years, he proposed to place all on the same footing and to give three years' grace. But he had done more. It seemed to him unreasonable to require every man who occupied land in Malacca to cultivate every beegah, as we called it here, in his possession; so that if he had 500 beegahs, and cultivated 420 beegahs, you would leave to him the cultivated land alone and take away the rest from him. It appeared to him (Mr. Sconce) that that would be not only intrusive but injurious. He had therefore added a Section allowing such parties to hold one-fourth more above his cultivation than the law, as interpreted by the Recorder of Malacca, proposed to give him. It might be said that one-fourth was not enough, and he (Mr. Sconce) for his own part was willing to increase the proportion. In preparing this Bill it had been his object to embrace all the points which the local authorities seemed to think should be settled by legislation, with a view to promote the best prosperity of the Settlement. He thought it important that the legislation which they had been pressed to adopt should be as complete as possible. He had nothing further to say with regard to this matter except to repeat his willingness to adopt in Committee any amendment having for its object the protection of any right of prescriptive occupancy which might be considered to be in the nature of an immemorial right vested in the cultivators.

The Motion was then put and carried, and the Bill read a second time.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended

form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

PORT BLAIR.

MR. SCONCE moved that the Bill "to regulate the administration of affairs in Port Blair" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

MALACCA LANDS.

MR. SCONCE moved that the Bill "to regulate the occupation of land in the Settlement of Malacca" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

The Council adjourned.

Saturday, February 9, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harington, Esq.,	Hon'ble Sir C. R. M. Jackson.
H. Forbes, Esq.,	

PEPPER DUTY (COCHIN).

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "to provide for the collection of Duty of Customs on Pepper exported by Sea from the British Port of Cochin."

PETITION OF KHOSHAL MUNDUL.

THE CLERK presented to the Council a Petition of the Indigo Planters' Association, praying that a full enquiry be made into the matters stated in the Petition of Khoshal Mundul, and that the Council will take such measures as may be necessary and expedient to prevent the reception of Petitions containing such unsubstantiated charges against any party, as are put forth in the Petition referred to.

SIR CHARLES JACKSON said that, in rising to move that this Petition be printed and referred to the Standing Orders Committee, he begged leave to make a few observations. Sometime ago, one Khoshal Mundul and others presented a Petition to this Council, containing serious charges reflecting on the character of a gentleman, an Indigo Planter in the Mofussil, Mr. Hills. The Petition charged him with instituting false and vexatious suits against them for rent, without making any demand, and without placing gomashtas in the villages to collect them. It also stated that the Petitioners were unwilling to go to the factories of this gentleman to pay in their rents, from fear of ill-treatment there, and of their accounts not being fairly settled, and of full credit not being given for the payments made by them. These, no doubt, were very serious charges against Mr. Hills. That Petition was ordered to be printed on the Motion of his Honorable friend to his left (Mr. Sconce), and the consequence was that we now had a counter Petition, answering *seriatim* those charges, and concluding with a prayer, *first*, that a full enquiry should be instituted into the matter; and, *secondly*, that some course should be adopted to prevent the reception of such Petitions by this Council. Now, although he thought the Petitioners had good ground to complain, he (Sir Charles Jackson) must confess that he could not concur in the prayer of their Petition. *First*, as to the institution of an enquiry, it should be remembered that we had no time to undertake such business. The public would seem to think that we did nothing more than sit here once a week for the purpose of passing laws, and seemed to be unaware

that Members of this Council sat from day to day in Select Committees on the Codes and Bills now pending before the Council. Besides, such enquires were not the legitimate business of this Council, and, supposing it were so, he (Sir Charles Jackson) doubted if we had any power to examine witnesses on oath, or carry out an enquiry of the kind.

Nor did he agree with the Petitioners in the second prayer of their Petition. He should be sorry to say anything which might be construed into a desire to restrain the freedom of petitioning. He believed that the freedom of petitioning to this Council was quite as important as the freedom of debate in the Council itself, and should not be in any way restrained. But he thought that the Petitioners had very good ground to complain of the printing of Petitions containing such serious charges against individuals therein named, and he understood from the gentlemen who had called upon him yesterday, that their objection was, in fact, directed against the publication, by the Council, of this Petition. Upon that point, he (Sir Charles Jackson) really thought that it would be very useful if we passed some Standing Order to the effect that any Honorable Member who moved the printing of a Petition, should be deemed answerable for the propriety of printing it. He believed that a great deal more was printed by order of the Council than was either useful or necessary, and that, he thought, was a great consideration in these hard times. In making these observations, he did not mean to reflect at all on the Honorable Member for Bengal. It had grown to be quite a habit, and it had become a mere matter of form in this Council—and he (Sir Charles Jackson) had been guilty of it himself —to move that Petitions presented to the Council should be printed without any knowledge of their contents. He had no doubt that his Honorable friend (Mr. Sconce) had moved for the printing of the Petition in question, as a mere matter of form, without having read it. He (Sir Charles Jackson) thought it very necessary to pass some Standing Order on the subject, for just observe the state of the question at present. It was just this. The Council having ordered the Petition to be printed, the Clerk of the Council, under the Standing Orders, had no discretion in the matter; whereas, if the Clerk had had such a discretion, the present case probably would not have arisen. On the whole, therefore, he thought that this Petition should be printed on the principle of fair play, and that it should be referred to the Standing Orders Committee.

MR. SCONCE said, he had very little to say with reference to the Motion just made. Indeed, he believed, the Council were already satisfied as to the only ground upon which he had made the Motion referred to by the Honorable and learned Judge; and that, as supposed by his Honorable and learned friend, it had been proposed simply as a matter of form. He (Mr. Sconce) had looked upon the prayer of the Petition as one, in the opinion of the Petitioners, requiring legislation; and it was simply that that prayer might be brought before the Council, that he had moved that it should be printed. He was sure that the Council were satisfied that, in making that Motion, he had neither adopted the language of the Petition nor concurred in its concluding prayer. He was unwilling to deprive the Petitioners of the benefit of petitioning the Council; and in making the Motion referred to, his object had been simply to bring the case formally before Honorable Members.

THE VICE-PRESIDENT said, it was not his intention to occupy the time of the Council at any length, or to oppose the Motion of the Honorable and learned Judge. But he wished to call the attention of the Council to the Standing Orders, as they now stood. Much attention and consideration had been bestowed in the preparation of them, and especially upon that portion of them which related to Petitions. It was the great object of the gentlemen by whom they were prepared that every one should have an opportunity of presenting a Petition to the Council.

They considered that this Council was not a representative body, and that there might be a difficulty in some cases in getting Petitions presented by individual Members. It was therefore provided by Order No. 24, that all Petitions should be transmitted to the Clerk of the Council. The first Section of the Standing Orders, relating to Petitions, provided as follows :—

"Petitions to the Legislative Council must relate to matters connected with the business of the Council. Every petition shall be superscribed 'To the Honorable the Legislative Council of India,' and shall be dated and signed by the petitioner or petitioners. It shall be in respectful and temperate language, and shall conclude with a distinct prayer."

The Petition under reference did relate to the business of the Council, for, without expressing any opinion on the subject matter brought before the Council by the prayer, it must be admitted that it was a proper one for their consideration. It was as follows :—

"That your Honorable Council will be graciously pleased to empower Collectors of Revenue to receive money tendered by ryots on account of rents due by them to zemindars, putneedars, ezardars, and others entitled to receive the same, which money shall, from the date of such tender, be held to the credit of the tendering ryots."

No doubt the Honorable Member for Bengal, when he moved that the Petition be printed, was not aware that it contained reflections upon the character of any private individual. The Petition complied with the Standing Order which provided that a Petition must be in respectful and temperate language and conclude with a distinct prayer. In England Petitions were generally presented by Members. But as this Council was not a representative body, it was provided that, if the Petition were framed in conformity with the Orders, it should be brought under the consideration of the Council by the Clerk of the Council. The Standing Orders were as follows :—

"If in the judgment of the Clerk the Petition be framed in conformity with Order No. XXII., he shall bring the petition under the consideration of the Council by reading the abstract thereof, and the prayer or the substance of the prayer of the Petition, whereupon such Petition shall be deemed to have been received by the Council.

If in the judgment of the Clerk the Petition be not framed in conformity with Order No. XXII., or if he have reason to doubt the authenticity of any signature thereto, he shall certify the same on the back of the petition, and shall report the fact to the Council, in which case the Petition shall not be received by the Council, except upon the Motion of a Member."

The Orders then proceeded :—

"Any petition received by the Council may, upon the Motion of a Member, be disposed of in one or more of the following ways :—

1. It may be ordered to be printed.
2. It may be referred to the Select Committee sitting on any Bill to which it relates.
3. It may be referred for report to a Select Committee to be appointed specially for that purpose.
4. If no motion be made upon such a Petition, the Petition shall be laid upon the table, and afterwards deposited by the Clerk amongst the Records of the Council."

So that, had no Motion been made on the subject of the Petition in question, it would have been laid upon the table and deposited by the Clerk among the records of the Council. It was very desirable that Honorable Members should have an opportunity of reading and considering Petitions presented to the Council ; but it was not to be expected that they could do so at the very moment of their being brought before the Council. Therefore, as a general rule, it had been the practice for Petitions relating to matters of any importance to be printed and circulated, so as to give each Member an opportunity of reading and considering them. The great objection to this Petition was that it contained reflections upon the character of Mr. Hills, and charged him, amongst other things, with having instituted false and vexatious suits against the Petitioners. Probably this Petition ought not to have been printed and circulated, without the attention of the Standing Orders Committee having been drawn to it. The Honorable and learned Judge had said that, because

the Council had ordered the Petition to be printed, nothing more could be done in the matter. But the 134th Standing Order provided as follows :—

"When any paper ordered by the Council to be printed may appear to the Clerk of the Council, by reason of its containing matter reflecting upon the character of individuals, or for any other reason, unfit for publication, either wholly or in part, it shall be the duty of the Clerk of the Council, before causing such paper to be printed, to bring the subject to the notice of the Standing Orders' Committee. Thereupon the Committee shall give such directions concerning the printing or publication of the paper as to them may seem fit ; and report thereon to the Council."

It was to be observed that this was to be done after the paper had been ordered to be printed. No doubt, if this matter had not escaped the attention of the learned Clerk of the Council, he would have brought it to the notice of the Standing Orders Committee, who might have ordered all names to be omitted, or made some other order on the subject. It was an unfortunate circumstance, but he was quite sure that it was merely through inadvertence that the matter had escaped him. He had frequently drawn his (the Vice-President's) attention to particular passages in Petitions reflecting upon the characters of individuals, in consequence of which he himself had not moved to print the Petition, and in several cases he believed that Petitions had not been printed for similar reasons.

With reference to the proposed change in the Standing Orders, he was quite willing to consider the matter; but he thought that the Committee could hardly propose any Standing Orders better adapted to the circumstances of the case than the present. It would be better if all Petitions were couched in general terms, instead of containing complaints against private individuals ; but this could scarcely be expected, looking to the class of persons by whom Petitions were frequently prepared. He had no objection to referring it to the Standing Orders Committee to consider whether any remedy could be suggested, with a view to prevent a recurrence of the matter complained of. Probably, it might be provided that no Petition, though ordered to be printed, should be published or sold, except on the express Motion of a Member, who should be considered responsible that the Petition was a proper one for publication. He was anxious, however, not to do any thing which might throw any impediment in the way of petitioning. If the matter were referred to the Standing Orders Committee, as proposed, he had no doubt that it would receive their best attention.

SIR BARTLE FRERE said, he so entirely agreed with what had fallen from the Honorable and learned Vice-President, that he had little to add on the general question now before the Council. But he would go farther and put it to his Honorable and learned friend opposite (Sir Charles Jackson) whether he would not be considerably abridging the utility of this Council by throwing upon individual Members the responsibility of judging whether Petitions which reflected on individuals should or should not be printed. In this particular case he did not understand, from what he recollected of the Petition, that there was anything in it, the printing of which could in itself have been objected to, supposing even it had not attracted the attention of the Honorable Member for Bengal or of the learned Clerk of the Council. He (Sir Bartle Frere) had the honor to be acquainted with the gentleman whose name was mentioned in the Petition, and from his knowledge of his character he should have considered it most improbable that this gentleman could have committed any illegal or oppressive act. On the other hand, had he not known the gentleman, he should not have supposed the charges made against him in themselves improbable until he had seen his reply to those charges. But he (Sir Bartle Frere) doubted whether it was a safe or prudent course to hold Members responsible for printing Petitions, because some of the allegations contained in them might be libellous as regarded par-

They considered that this Council was not a representative body, and that there might be a difficulty in some cases in getting Petitions presented by individual Members. It was therefore provided by Order No. 24, that all Petitions should be transmitted to the Clerk of the Council. The first Section of the Standing Orders, relating to Petitions, provided as follows :—

"Petitions to the Legislative Council must relate to matters connected with the business of the Council. Every petition shall be superscribed 'To the Honorable the Legislative Council of India,' and shall be dated and signed by the petitioner or petitioners. It shall be in respectful and temperate language, and shall conclude with a distinct prayer."

The Petition under reference did relate to the business of the Council, for, without expressing any opinion on the subject matter brought before the Council by the prayer, it must be admitted that it was a proper one for their consideration. It was as follows :—

"That your Honorable Council will be graciously pleased to empower Collectors of Revenue to receive money tendered by ryots on account of rents due by them to zemindars, putneedars, ezardars, and others entitled to receive the same, which money shall, from the date of such tender, be held to the credit of the tendering ryots."

No doubt the Honorable Member for Bengal, when he moved that the Petition be printed, was not aware that it contained reflections upon the character of any private individual. The Petition complied with the Standing Order which provided that a Petition must be in respectful and temperate language and conclude with a distinct prayer. In England Petitions were generally presented by Members. But as this Council was not a representative body, it was provided that, if the Petition were framed in conformity with the Orders, it should be brought under the consideration of the Council by the Clerk of the Council. The Standing Orders were as follows :—

"If in the judgment of the Clerk the Petition be framed in conformity with Order No. XXII., he shall bring the petition under the consideration of the Council by reading the abstract thereof, and the prayer or the substance of the prayer of the Petition, whereupon such Petition shall be deemed to have been received by the Council.

If in the judgment of the Clerk the Petition be not framed in conformity with Order No. XXII., or if he have reason to doubt the authenticity of any signature thereto, he shall certify the same on the back of the petition, and shall report the fact to the Council, in which case the Petition shall not be received by the Council, except upon the Motion of a Member."

The Orders then proceeded :—

"Any petition received by the Council may, upon the Motion of a Member, be disposed of in one or more of the following ways :—

1. It may be ordered to be printed.
2. It may be referred to the Select Committee sitting on any Bill to which it relates.
3. It may be referred for report to a Select Committee to be appointed specially for that purpose.
4. If no motion be made upon such a Petition, the Petition shall be laid upon the table, and afterwards deposited by the Clerk amongst the Records of the Council."

So that, had no Motion been made on the subject of the Petition in question, it would have been laid upon the table and deposited by the Clerk among the records of the Council. It was very desirable that Honorable Members should have an opportunity of reading and considering Petitions presented to the Council ; but it was not to be expected that they could do so at the very moment of their being brought before the Council. Therefore, as a general rule, it had been the practice for Petitions relating to matters of any importance to be printed and circulated, so as to give each Member an opportunity of reading and considering them. The great objection to this Petition was that it contained reflections upon the character of Mr. Hills, and charged him, amongst other things, with having instituted false and vexatious suits against the Petitioners. Probably this Petition ought not to have been printed and circulated, without the attention of the Standing Orders Committee having been drawn to it. The Honorable and learned Judge had said that, because

the Council had ordered the Petition to be printed, nothing more could be done in the matter. But the 134th Standing Order provided as follows :—

"When any paper ordered by the Council to be printed may appear to the Clerk of the Council, by reason of its containing matter reflecting upon the character of individuals, or for any other reason, unfit for publication, either wholly or in part, it shall be the duty of the Clerk of the Council, before causing such paper to be printed, to bring the subject to the notice of the Standing Orders' Committee. Thereupon the Committee shall give such directions concerning the printing or publication of the paper as to them may seem fit ; and report thereon to the Council."

It was to be observed that this was to be done after the paper had been ordered to be printed. No doubt, if this matter had not escaped the attention of the learned Clerk of the Council, he would have brought it to the notice of the Standing Orders Committee, who might have ordered all names to be omitted, or made some other order on the subject. It was an unfortunate circumstance, but he was quite sure that it was merely through inadvertence that the matter had escaped him. He had frequently drawn his (the Vice-President's) attention to particular passages in Petitions reflecting upon the characters of individuals, in consequence of which he himself had not moved to print the Petition, and in several cases he believed that Petitions had not been printed for similar reasons.

With reference to the proposed change in the Standing Orders, he was quite willing to consider the matter; but he thought that the Committee could hardly propose any Standing Orders better adapted to the circumstances of the case than the present. It would be better if all Petitions were couched in general terms, instead of containing complaints against private individuals ; but this could scarcely be expected, looking to the class of persons by whom Petitions were frequently prepared. He had no objection to referring it to the Standing Orders Committee to consider whether any remedy could be suggested, with a view to prevent a recurrence of the matter complained of. Probably, it might be provided that no Petition, though ordered to be printed, should be published or sold, except on the express Motion of a Member, who should be considered responsible that the Petition was a proper one for publication. He was anxious, however, not to do any thing which might throw any impediment in the way of petitioning. If the matter were referred to the Standing Orders Committee, as proposed, he had no doubt that it would receive their best attention.

SIR BARTLE FRERE said, he so entirely agreed with what had fallen from the Honorable and learned Vice-President, that he had little to add on the general question now before the Council. But he would go farther and put it to his Honorable and learned friend opposite (Sir Charles Jackson) whether he would not be considerably abridging the utility of this Council by throwing upon individual Members the responsibility of judging whether Petitions which reflected on individuals should or should not be printed. In this particular case he did not understand, from what he recollected of the Petition, that there was anything in it, the printing of which could in itself have been objected to, supposing even it had not attracted the attention of the Honorable Member for Bengal or of the learned Clerk of the Council. He (Sir Bartle Frere) had the honor to be acquainted with the gentleman whose name was mentioned in the Petition, and from his knowledge of his character he should have considered it most improbable that this gentleman could have committed any illegal or oppressive act. On the other hand, had he not known the gentleman, he should not have supposed the charges made against him in themselves improbable until he had seen his reply to those charges. But he (Sir Bartle Frere) doubted whether it was a safe or prudent course to hold Members responsible for printing Petitions, because some of the allegations contained in them might be libellous as regarded our-

ties unknown to them. He (Sir Bartle Frere) would ask Honorable Members if it would not be putting upon individual Members of the Council an invidious and dangerous task in requiring that they should satisfy themselves with regard to the statements in a Petition, in each case in which a Petition was brought before the Council. In other respects he quite agreed with the Honorable and learned Vice-President, and he hoped that the Honorable and learned Judge opposite (Sir Charles Jackson) would not throw any further responsibility on each Member than was now provided by the Standing Orders.

SIR CHARLES JACKSON said, he had carefully guarded himself, in what he said, from anything which might be understood as a wish to obstruct the right of petitioning, and the only responsibility he wished to impose upon Members of this Council was, that, whenever a Member moved that a Petition should be printed, he should be responsible that the Petition was a proper one to be printed. He did not think that that abridged the privileges of Members. His observation was entirely confined to the printing of the document.

The Motion was then put and carried.

PENAL CODE.

THE CLERK reported to the Council that he had received, by transfer from the Home Department, the following Despatch from the Secretary of State :—

" TO HIS EXCELLENCY THE RIGHT HON'BLE THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

MY LORD,—I have to acknowledge the receipt of your letter, dated 16th October, (No. 81), 1860, transmitting a copy of the Indian Penal Code, and in reply to express the great gratification of Her Majesty's Government that this important measure has been passed into law.

2. Her Majesty's Government have observed from the Proceedings of the Legislative Council the important part taken by Sir Barnes Peacock in carrying the Code through the Legislative Council, and they request that you will convey to him their sense of the high value of the service he has thus rendered to the Government of India.

3. I await your further report on the subject of the Code of Procedure for the Courts established by Royal Charter.

I have the honor to be, &c.,

(Signed) C. WOOD.

London, 22nd December 1860."

SIR BARTLE FRERE said, he felt sure that the Members of this Council would not consider it as a mere matter of course that the document just read should be printed, a document the receipt of which would, he felt sure, be matter of pride and congratulation to all Honorable Members as recognizing the services of the Honorable and learned Vice-President.

THE VICE-PRESIDENT said, he felt much gratified by what had been said regarding himself by the Right Honorable the Secretary of State (Sir Charles Wood) and the Honorable the President of the Council (Sir Bartle Frere). He could not claim much credit to himself in this matter. He had simply exerted himself to carry through a Code which had been prepared by others. The Code, it was true, had been revised and altered in many respects by a Select Committee ; but he did not consider himself entitled to any greater credit than his co-adjutors.

The Motion was then put and carried.

LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK reported that he had received a communication from the Home Department, forwarding papers from the Government of Bengal relative to the Bill " for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a license."

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

MALACCA LANDS.

THE CLERK reported that he had received a communication from the Home Department, forwarding a copy

of a letter from the Governor of the Straits Settlement drawing attention (among other matters) to the urgent necessity for the passing of a law to regulate the occupation of land in the Settlement of Malacca.

MR. BEADON moved that the communication be printed.

Agreed to.

MERCHANT SEAMEN.

THE CLERK reported that he had received a further communication from the Governor of the Straits Settlement, relative to a proposed modification of Act I of 1859 (for the amendment of the law relating to Merchant Seamen).

MR. BEADON moved that the communication be printed.

Agreed to.

WRECKED BOATS.

MR SCONCE presented the Report of the Select Committee on the Bill "for the preservation of property recovered from wrecked boats."

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. FORBES moved that the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah, within the Presidency of Fort St. George" be read a third time.

The Motion was carried, and the Bill read a third time.

MR. FORBES moved that Mr. Beadon be requested to take the above Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

PAPER CURRENCY.

MR. LAING said that it would be convenient to the public to know that the Bill "to provide for a Government Paper Currency" had been under the consideration of the Select Committee. He hoped that the Report of the Committee would be presented to the Council on this day week, when he should take the opportunity of making a statement of the alterations which had been made.

The Council adjourned.

Saturday, February 16, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. B. Harington, Esq.,
Hon'ble C. Beadon,	H. Forbes, Esq.,
Hon'ble Major General Sir R. Napier,	A. Sconce, Esq., and
Hon'ble S. Laing,	C. J. Erskine, Esq.,

MYSORE FAMILY.

The following Message from the President in Council was read by the Vice-President :—

MESSAGE No. 258.

In continuation of the Message No. 248, dated the 21st of December, the President in Council has the honor to forward to the Legislative Council an abstract of the account, in which the stipends, which have, from time to time, been paid to the descendants of Tippoo Sultan are debited, showing the total amounts paid and credited in each year, from the year 1799 to the present time.

By order of the Honorable the President in Council.

(Signed) W. GREY,
Secy. to the Govt. of India.

FORT WILLIAM,
The 9th February 1861.

STAMP DUTIES.

THE CLERK presented to the Council a Petition from certain Fire Insurance Associations, praying that Policies of Fire Insurance be exempted from Stamp Duty, or that at least the rate be not greater than that charged in England.

MR. BEADON moved that the Petition be printed. In doing so, he said that the Clerk of the Council had brought to his notice the fact of this Petition being about to be presented. No communication on the subject had been made by the Petitioners to Go-

vernment. It appeared, however, that, when the Stamp Act was passed, the necessity for providing a special rate of Stamp Duty, in respect of Fire Insurance Policies, was overlooked, and consequently they were made subject to the same rate of Duty as Bonds, which was very much higher than such transactions would bear. He thought it unnecessary to pass a special law for the purpose of prescribing a lower rate of Stamp Duty for these documents, as the Government was vested with general authority to reduce the rate of Duty in particular cases, and would do so in this. But when the Stamp Act came to be revised, the point would receive attention.

Agreed to.

INDIGO COMMISSION.

THE CLERK reported to the Council, that he had received a communication from the Home Department, forwarding a copy of the Report of the Indigo Commission, together with a copy of a Minute by the Honorable the Lieutenant-Governor of Bengal thereon.

PAPER CURRENCY.

MR. LAING, in presenting the Report of the Select Committee on the Bill "to provide for a Government Paper Currency," said that, as this subject was one of general interest, and as the alterations which had been made in the Bill were important, it would perhaps be convenient if he were allowed to make a short statement explaining what those alterations were. In doing so, he should wish, in the first place, to advert shortly to the position in which the question stood before the Select Committee, in order to acquit the Government of any impropriety in having changed the measure as it originally stood. He thought nothing more mischievous than that every fresh Financial Minister should introduce changes in measures which had either been already passed or been proceeded with so far as to be on the eve of passing into law. He therefore considered it important, before he proceeded to explain his views, to relieve himself from such an imputation.

With regard to the Currency Bill, it would be sufficient to advert to the position in which it actually stood. The Council were aware that the Bill, as originally printed, was in the form in which it had been introduced by the late lamented Mr. Wilson, and in which he gave effect to the scheme as first announced by him. That scheme had given rise to many comments, but, in consequence of Mr. Wilson's untimely death, it was impossible for us to know what alterations he might subsequently have been disposed to adopt. In the meantime, a Despatch was received from the Secretary of State, in consequence of which a fundamental alteration had been made in the principle of the Bill. He would advert to this change presently, but in the meanwhile he would merely observe that the principle of the Bill having been fundamentally altered, it became inevitably necessary to re-cast and re-consider the whole measure. Another matter to which he desired to refer in passing was that, in criticising freely the original scheme of Mr. Wilson, he (Mr. Laing) wished it to be distinctly understood that he intended no disrespect to his memory. On the contrary, he thought that the memory of that eminent Statesman, who died in the discharge of his arduous duties, stood far too high to be affected by any fair criticism of any of his measures. Whatever differences of opinion there might be as to some of his views on the question of Currency, nobody would deny that we were indebted to Mr. Wilson for the first impulse given to the subject; and, if a better system of Currency should be introduced in India, the credit of it would be mainly due to his genius.

He would now proceed to state what the alteration made by Sir Charles Wood's Despatch really was. He had said that the Despatch of the Secretary of State had introduced a change of principle which must be

considered to be fundamental. Mr. Wilson's scheme, as fully explained in his very able Minutes and Speech, was a very large and comprehensive measure. Its leading features consisted in the issue, at various circles into which India was to be divided, and through the agency of an independent body of Commissioners, of a Paper Circulation of Notes from 5 to 1,000 Rupees, based on a reserve, partly of specie and partly of securities, in a proportion which might fluctuate from time to time, but was in no case to fall below that of one-third of specie to two-thirds of securities. The Despatch of the Secretary of State negatived that principle, and asserted that the principle of a Paper Circulation for India ought to be the same as that adopted in England, of permitting issues of Paper only against actual Coin or Bullion, with the exception of a certain limited amount, to be defined by law, below which it might be reasonably supposed that the Paper Currency could never fall. At first sight it might appear that there was no great practical difference between the two schemes. As long as they were confined to small amounts, if Mr. Wilson's scheme were judiciously managed, as it would doubtless have been if his life had been spared, perhaps there would have been no very great practical difference in the working of the two schemes. As long as the total issue was confined to 5 or 6 crores of Rupees, it was probable that Mr. Wilson would not have issued against securities to an extent greater than might be done under the Bill as amended, which gave a *maximum* limit of 4 crores. But in order to understand the difference between the two principles of issue, we must look beyond the next year or two and this limited amount of circulation. In legislating for an Indian Currency, it must be remembered that we were not legislating for to-day or to-morrow, but for generations or perhaps centuries. It would be doing injustice to Mr. Wilson's scheme to lose sight of that fact. Undoubtedly his scheme was a large and comprehensive measure, the production of a great mind, and what he looked forward to was the release of a large portion of the present Silver Currency which, as he stated, exceeded 100 crores of Rupees, and the ultimate substitution of paper to an extent which might not improbably rise to 30 or 40 or even to 50 or 60 crores. His scheme was best described in his own words, in the following paragraph of his Minute :—

"There remains, however, yet to be noticed an advantage which would arise from the system, which, though common to all countries which adopt a Paper Currency, would particularly apply to India. I have already indicated the enormous amount of Silver which has been absorbed in the circulation of India, and I have already shown, in the early part of this Minute, that the precious metals so used for circulation, however useful and necessary as an instrument of exchange, nevertheless, in effect constitute an absolute reduction of the capital of the country available for reproductive purposes, and therefore that any means by which, through the instrumentality of paper, coin can be released from circulation, must have the direct effect of restoring a larger portion of such coin to the stock of the reproductive capital of the country. The portion so restored would be governed by the extent to which the issue department invested the coin received for notes in the purchase of public securities. The operation would be this; suppose one of the Banks to issue notes in exchange for coin, to the extent of three crores of Rupees; one crore would be retained as a reserve, to meet demands for conversion, two crores would be applied to the purchase of public stock, to be held in security for the balance; this purchase would disengage the capital of the persons from whom the purchase was made to that extent, and which would be at once available for other purposes; this operation would increase the price of public securities by the additional demand, and would tend to reduce the rate of interest, by increasing the fund available for employment in mercantile and industrious pursuits; and thus the economy of capital alluded to in the early part of this Minute would be effected, to whatever extent the issue department held public securities against the notes in circulation, which, after a time, must necessarily amount to a *very large sum*."

And, again in his speech, he talked of the effect of his measure being as if an immense Silver Mine had been suddenly discovered in the Maidan.

In fact, if the scheme were good for anything, it was good for a very large amount. If it could be safely carried out for 5 crores, it was good for 10 or 100 crores, and he (Mr. Laing) could

confidently say that this was the real scope of the scheme which must be looked upon as a great plan for doubling the available capital of the country, and giving the Government large and substantial relief in its finances, by the wholesale substitution of paper for silver. The scheme, however, advocated by the Secretary of State in accordance with the principles generally received in England, was of a less ambitious and totally different character. It presented the advantage of securing a Paper Currency absolutely identical, beyond a certain safe limit, with the Metallic Currency which it displaced, and free from those risks which, under the most able management must attend an extensive issue, by the Government, of Promissory Notes based on a large proportion of securities which in times of difficulty might be almost inconvertible. Under that system there was obviously no discretion left to Government. There could be no doubt as to the convertibility of the Notes, as there would be a reserve of actual specie for every Note issued beyond a certain narrow limit. To show the practical difference between the two schemes, let us suppose the paper circulation to be 15 crores, no very excessive amount for all India with a Metallic Circulation exceeding 100 crores. According to Mr. Wilson's scheme that amount would be represented by five millions in specie and ten millions in securities, whereas according to Sir Charles Wood's scheme the amount would be represented by eleven millions in specie and four millions in securities; and according as the circulation extended, the same principle would have greater force. The great difference, therefore, between the two schemes was this. According to Mr. Wilson's scheme the State would undertake the functions of a banker, and issue promises to pay, trusting for the means of payment, in times of pressure, to a sale of securities. That was exactly what a private banker did. He issued promises to pay and coined his credit into money, trusting in times of emergency to being able to realize his securities to meet the claims upon him. Now the question was whether that was a function which a State ought to undertake. On that point, a great preponderance of authority was in favor of Sir Charles Wood's principle. It was the principle adopted by Sir Robert Peel, Lord Overstone, and other great Financial Authorities, and recognised by the whole course of modern Legislation in England, so that it might fairly be called the "Orthodox principle." On the other hand, a small minority of able men, among whom Mr. Wilson occupied a distinguished position, held opposite opinions, namely, that Paper Money, if convertible, could never be in excess; and that, by providing by law for a certain proportion of the total issue being held in specie, convertibility could always be secured, and all objection obviated to the State undertaking the functions and reaping the profits of a Bank of Issue. He must say for his own part, he heartily concurred in the principle of Sir Charles Wood's Despatch. A pretty large experience in commercial and monetary affairs had taught him (Mr. Laing) this maxim, that there was no such thing as a profit without a corresponding risk. Even in the case of private bankers, how often did we see the most prudent overtaken by sudden calamities, and those who were wealthy one day, in the Gazette the next? But the risk incurred by a Government was greater than that run by a banker. The latter had greater facilities for meeting a pressure. The State was confined to dealing with its own securities and could not contract its circulation when it saw danger approaching, as a bank could, by curtailing discounts and advances, and letting short dated securities run off as they matured. The State could only contract by selling in a falling market its own securities, which it had purchased at a higher price in a rising market; and it remained to be seen whether, if such a scheme as Mr. Wilson's were fairly inaugurated, the losses on sales of securities would not more than counterbalance

the profits derived from their interest. But that was not all. The banker was free to act for his own interests, but the Government was in a different position. In times of difficulty, the Government was exposed to pressure. There could not be the least doubt that, if we had such a scheme of Paper Circulation as had been shadowed out, if a serious crisis had set in such as periodically occurred in all commercial communities, we should have had a deputation of leading bankers and merchants coming to the Government, and telling us that, if we went on forcing securities on the market, and curtailing the circulation, the result would be that they must all stop payment. The Government would probably do in such a case, what Governments even in a stronger financial position than that of India had been compelled to do in similar cases, namely, suspend the law, and thus we should drift into an inconvertible Paper Circulation. Now if there was one evil more to be deprecated than another, it was to have an inconvertible circulation of small Notes subject to a fluctuating depreciation. He once had an opportunity of seeing the practical working of a system of that kind in Austria where the Currency was represented by dirty rags of Notes going as low as a florin or 1 Rupee. That paper became depreciated by degrees, commencing with 5 or 10 per cent. until it reached 50 or 60 per cent. discount, the consequence being an inconceivable degree of confusion and demoralization throughout the country. The very peasant who brought his produce to market, had to study the exchange quotations in the Price Current of the day, to know whether five shillings a bushel for his grain or six pence a dozen for his eggs meant a good price or a bad one; and often before he got home, what he thought a good bargain, was turned into a bad one, by some sudden fluctuation of the exchange caused by speculators at Vienna. To such an extent was this carried that peasants often preferred to go thirty or forty miles to the frontiers of Saxony, rather than two or three miles to the neighboring market town in their own country, for the purpose of getting real silver in exchange for their produce. He therefore thought that, of all evils, this was the most to be deprecated, and he hoped that both now and for all future time, whatever financial difficulties the Government might be exposed to, it would keep steadily clear of anything tending towards an inconvertible Paper Currency.

There was another important reason why he (Mr. Laing) thought that Sir Charles Wood's principle was the soundest. All parties were agreed that a Paper Currency ought to be identical with the metallic currency which it displaced. But the system of issuing against two-thirds of securities and one-third of specie, would not always ensure this identity, and there was considerable risk that in times of buoyancy and speculation the circulation would be unduly extended. Supposing that three crores of Silver were imported from England to this country, to pay for a balance of trade in favor of India, then under a purely metallic currency or under Sir Charles Wood's system, the total circulation would be increased by three crores either in Rupees or in notes representing Rupees, and there would be an end of it. But under the other scheme, the three crores would be exchanged into notes, which would add three millions to the existing circulation: but the matter would not end there, for the Commissioners might invest two crores in securities, and thus two-thirds of the original three crores would be again thrown into circulation; and if the two crores for which the securities were sold, came back to the Commissioners in Rupees, they might again issue paper in exchange and buy securities with two-thirds of the amount; and thus the process might go on until the original three crores had been made the basis of an expansion of the circulation by two or three times that amount. If the market were in a state of buoyancy, and prices rising, that excess of circulation might for a time be absorbed, while, according to the system he was now advocating, it was perfectly clear that there could

be no addition to the aggregate amount of circulating medium in India except under an actual *bonâ fide* importation of Silver. He thought that that was a point of considerable importance, because, if we looked at what had taken place in India during the last three years, we should find a great increase in the wages of labor and the prices of commodities, which should warn us as to what the consequences might be if we were to accelerate the process already going on so rapidly by any artificial inflation of the Currency. There could be no doubt that this general rise of prices and wages was one great means which Providence was using to raise the material and physical welfare of the vast population of this great Empire. But it was evident that this could only be done safely by leaving matters to the healthy action of Commerce. If we left it to itself, the effect would be very much this. As the prices of commodities and wages rose, production would increase and labor become more efficient, so that a natural check would be provided against any excessive rise in the cost of production of the main staples of India, and the country would become rich rather by increasing the bulk of its produce than by enhancing the price. But if you unnaturally stimulated the rise of prices by an over-issue of Paper Circulation, you ran considerable risk of changing the healthy action of Commerce into a feverish excitement which was sure to bring about a re-action. If we continued to go on as we had done for the last two or three years, the result would be that many articles of Indian produce might be driven out of the market by the competition of other countries. In such articles as Flax, Jute, and Hemp, we might be undersold by Russia—in Indigo by Guatemala—and so on; and he therefore thought that the Government ought to be exceedingly cautious how it took any step that might unduly accelerate the tendency to a general advance as might be the case under a system of Paper Currency which to any considerable extent represented Securities and not Bullion. Such an advance might even reach a point seriously embarrassing to the Government if the general rise in the rate of wages and cost of living made the present scale of salaries and the pay of the troops no longer adequate. For these reasons he thought it by far the wisest course to adhere to the principle of Paper Currency adopted in England as laid down in Sir Charles Wood's Despatch.

Adopting that principle of a fixed issue, we proposed to take, as the extreme limit to which we might issue notes against Securities, the sum of four crores of Rupees. The reason why we had fixed on that sum was that it was very nearly the amount which might be issued in excess of actual specie by the present Banks under their existing Charters. The Banks of Bengal, Madras, and Bombay were authorized to issue, in the aggregate, notes to the amount of five crores of Rupees with a reserve of one-fourth of their total liabilities in specie, to meet their notes and other demands; and he thought it right that the Mercantile Community should have an assurance that the present amount of authorized issue should not be curtailed, as might practically be the case if a lower limit than four crores were adopted. Within this limit also he thought that the Government, whose general credit and cash balances were made distinctly responsible, over and above the special reserve, might be safely trusted so to regulate their issues as not to endanger the payment of their notes. For this purpose it would be essential that Government should not at first exercise the full power of issuing up to the four crores against securities, but should proceed with great caution, feeling their way gradually, and always maintaining an ample reserve of specie. Beyond the limit of four crores no issue whatever would be permitted, except against actual Coin or Bullion in the vaults of the Mint or local Treasuries, unless the Legislative Council should hereafter see fit, after experience of the working of the law now proposed, and full discussion and considera-

tion, to pass a further law on the subject.

This fundamental change in the principle of the issue of notes involved the necessity of a considerable change in the machinery of the Bill. Mr. Wilson's scheme required that there should be a self-acting machinery independent of Government, to regulate the issue of Notes and the purchase and sale of securities according to the principles laid down by the Act. When however, the function of Commissioners was reduced, as now proposed, to the simple one of giving Notes for specie or specie for Notes, it was obviously unnecessary to provide for an expensive staff or to make them independent of the Government. Any District Collector might do the work that was now required ; or perhaps even that agency might not always be necessary. In the Presidency towns, he believed that the most convenient agency would be the existing Presidency Banks, for whose Paper Circulation the Notes of the Government would be substituted. By adopting this plan the Government would avoid much difficulty. They would not give up the principle of a Government Issue, or in any way mix up the Paper Currency with Banking operations, but they would simply employ the Banks as their agents in managing the minor details. The working would be something like this. The Mint would be the Head Quarters of Issue, and the Master of the Mint would be the Commissioner of Currency for wholesale issue ; so that, instead of receiving Mint certificates which were not available till after some days, Banks or Merchants depositing bullion would receive Notes payable on the spot. But for all purposes of retail dealing with the general public the agency of the Bank would be adopted as the most economical and convenient. If you wanted a Note cashed, you would go to the Bank where an Establishment for the purpose already existed, and who could do the work better and cheaper than the Government. The Bank would look after forged Notes, and conduct the multifarious correspondence with the public about lost Notes, Notes of which payment was stopped, and so on, just as was done by the Banking Department of the Bank of England. In fact the system would be precisely that of the Bank of England, except that the Issue Department, instead of being under the same roof and part of the Bank, would be at the Mint and part of the Government. That would also fit in very well with the arrangements proposed with the Banks for taking charge of the Cash Balances at the General Treasuries and doing the business of the Government as regards receipts and payments. The present system of making payments in bags of Silver and of locking up in Silver cash balances at the Treasury, with all its concomitants of delay and difficulty, was a most barbarous one. Under the arrangements now proposed, Government would pay and receive by cheques upon the Banks, so that the same agency and the same locality would suffice for all cash business between the Government and the public, and also for all business connected with the Paper Currency. How far that system would answer up the country it was difficult to say. That would depend on the extent to which Banks could profitably establish branches in the Mofussil. He did not think that that was a matter which the Government ought to force upon the Banks, as it was purely a question for themselves to decide. At the same time, although the experiment in former years had not been successful, he was not without hopes that many branch Banks would shortly be established. He thought that the opening of Railways must make a sensible difference in this respect ; and he could not help hoping that, in many parts of the country, when they were opened up by Railways, there would be an influx of European capital and enterprise, leading to a demand for the improved modes of doing business arising from the establishment of Banks. He felt very confident, when he looked to the boundless resources of India, and saw, even from his own short experience, how enormously the drawbacks of climate and

otherwise to European residence had been exaggerated, that a considerable influx of European capital and enterprise would ere long take place, accelerating the development of that era of prosperity and civilization in India to which he could not help looking forward.

Another important amendment had been introduced with a view to the qualified introduction of Gold. He must say that, at the time when we were professing to make a reform in the Currency of India, it did seem to him to be what he could hardly call otherwise than barbarous, to introduce a system based upon the entire exclusion of that all pervading metal whose superior convenience was fast making it the sole or principal medium of all the most civilized nations of the world. It seemed to him a pity to enact, that for all time to come, in transactions between countries such as Australia and India, an Australian merchant should not be able to pay for a cargo of Indian rice without resorting to the round about and expensive process of sending his Australian gold to London, thence to France or Germany to buy silver, and finally that silver overland or round the Cape to India. Then too, there was the great advantage involved in the fact that Gold always carried its own intrinsic value along with it. It would be a universal medium of exchange from one end of India to another, whereas a small note circulation involved the necessity of different issues in different circles, and the risk and trouble of keeping an adequate reserve of specie at numerous points. Holding this opinion with regard to Gold, it might be asked why the Committee had not brought forward some positive measure on the subject for making Gold a legal tender. To that he would answer that the question of a double standard of Gold and Silver was so complicated that, in the first place, he confessed he did not see his way clearly to a solution of all the difficulties attending it. In the second place, it would give rise to a long correspondence with England, the effect of which would be practically to prevent our passing the Bill, and giving India the benefit of an improved currency for some time to come. The Committee, therefore, only proposed the following modified scheme. In England, where Gold was the sole standard, the Bank of England was authorized to issue notes against Silver instead of Gold at rates to be fixed, from time to time, to an amount not exceeding one-fourth of their Gold Coin and Bullion. We proposed to reverse that principal, and to give a power of issuing up to one-fourth part of that portion of the circulation of India, which is represented by actual Coin or Bullion, against Gold Coin or Bullion, at rates to be determined by the Government, from time to time, with reference to the comparative value of Gold and Silver, but which, when once fixed, could not be altered without six months' notice, so as to prevent merchants and others from being taken by surprise. The practical effect of this would be that, supposing we commenced with a Paper Circulation of four millions, and two millions were issued against Securities, of the remaining two millions to be issued against Specie, £500,000 might be issued against Gold. Then the question would arise as to the rate at which Gold should be valued. Government would fix the rate, so as to protect itself from loss by any fluctuation likely to occur in the rates of exchange in the two metals. But as long as the Government protected itself against loss, he thought it should fix the rate as high as possible, so as to give Gold a fair chance of being introduced into circulation. He thought that £500,000 would be a proper limit in the first instance to which to take Gold, increasing it, however, as the circulation increased ; and within such limits, it appeared to him that Government might safely encourage the introduction of Gold by receiving it in payment in the local Treasuries, at the rate which had been fixed upon. In this manner not only would convenience be given to merchants trading with Gold-producing

countries, who would know that at a certain fixed rate Gold could always be converted into money, but also an opening would be afforded for trying fairly the experiment of the desire of the Country for a Gold as against a small Note Currency. If Gold under such circumstances rose to a premium which led to its extensive importation, it would soon supersede the necessity for small Notes, and means would be found for making it a legal tender. If, on the other hand, experience should eventually show that Gold did not command a preference, no harm would have been done, and the Clause would simply remain a dead letter, showing that, with a sound Paper Circulation superadded to silver, nothing more was wanted.

There was another important question which arose out of these alterations, namely the division of India into Circles. By the Original Bill it was provided that, by a certain day, India should be divided into a certain number of circles; he believed they were to be 16 or 17 in number. The necessity of their formation was quite apparent, as it would be impossible to make Notes issued at one place payable everywhere. This would involve the necessity of keeping a large reserve adequate for the whole circulation at each point, and it would not be desirable to make small Notes circulating in the hands of the mass of the population a legal tender at any great distance from the place where they could be exchanged for cash; and even if there were 17 circles, the Notes would often require to be made a legal tender at great distances from the place of issue. It could not be denied, however, that the division of India into separate circles would be in many respects an evil, and that it would be very desirable that an uniform circulation should be established over as wide an area as possible. It was proposed therefore that, instead of at once dividing India into circles, a discretionary power should be given to the Government to appoint from time to time such circles as might be found convenient, always providing that the Presidency towns should continue to be the centres of separate circles. Government would thus be able to feel its way and find by experience to what extent it would be necessary to resort to the circle system. It might be that, as confidence was extended, Notes issued at the Presidencies, if received at the Government Treasuries, and supplemented by a Gold Currency, would come so generally into use throughout India as to supersede in a great measure the necessity for local Notes. But this could only be effected by giving a discretion to the Government, as if the Council should insist on defining the area of legal tender by immediate legislation there would be no alternative but to create numerous circles. He thought however that, in asking for this discretion, he did not in the slightest degree interfere with the powers of the Legislative Council. On the contrary, he wished to see the influence of this Council extended, and its influence would be most surely extended by making its legislation sound, useful, and practical. In a country so vast and so diversified as India, the uniform application of one inflexible system was seldom possible, and the Legislature of India would often give proof of practical wisdom by contenting themselves with laying down broad rules and principles, and leaving to the Executive Government and its Officers, considerable latitude in the mode of giving them effect.

Finally, there was one other point to which he wished to advert, which had engaged the anxious attention of the Committee. It was the question as to what should be the lowest denomination of Notes which should be issued as a legal tender. The disadvantage of issuing two sorts of notes, one of which should be a legal tender, and the other not, seemed so great that the Committee considered it desirable to make all the notes uniform in this respect. It was only by making them legal tender that they could be made legally receivable in payment of all dues at the Government Treasuries, a condition which was vitally im-

portant for the success of any system of Paper Currency. As to what should be the lowest denomination of Notes, the Committee had proposed 20 Rs. The objection to having lower Notes was that it was thought that there would be considerable risk of exciting suspicion and discontent among the mass of the community who might be compelled to take payments in an unaccustomed medium, for which they could not readily obtain change without loss. He thought, however, that, if the smaller Notes as well as the larger were made a legal tender, so that their receipt in discharge of debts and at the local Treasuries might be a matter of legal right, these apprehensions might perhaps have been somewhat exaggerated; still to a certain extent, there was force in the argument that distrust in the Note circulation might be created by issuing Notes of a small denomination among poor and ignorant people before the native community had become familiarized with those of larger amounts, and two considerations weighed with the Government in agreeing to the amendment. In the first place, it was considered advisable, in this as in other respects, to proceed safely and cautiously, feeling our way gradually to the introduction of a novel system, rather than attempting to force it, in its theoretical completeness, in a country where questions of this nature were not generally understood. If those apprehensions should prove groundless, and after a short time, when the public were familiarized with the larger Notes, a spontaneous demand should arise for notes of a smaller denomination, it would be easy to introduce a Bill into the Council, extending the limit below 20 Rupees. In the mean time, the policy of the Government must be to do nothing in the nature of an attempt to force a Paper circulation. The great object must be to inspire confidence, and that would be done if the people found, when they went to a Treasury for the purpose of paying or receiving money, that it was a matter of indifference to the Treasurer whether they paid or took notes or money. It was no slight advantage of the principle of issue now adopted by the Bill that it removed any temptation on the part of Government to force the circulation of Notes farther than the country was prepared for them, in order to obtain a larger profit on a greater amount of securities. Let it be seen that Notes were offered simply to suit the convenience of the public, and confidence would be soon established. He found this view clearly given in the following extract from Sir Charles Wood's Despatch :—

> "It must always be borne in mind that it is from the benefits naturally arising to trade and commerce from the establishment of a sound Paper Currency that the principal advantage to the State must be anticipated."

He (Mr. Laing) most cordially concurred in that sentiment. Although it was hard for a Financial Minister to forego the seemingly easy profits of the interest on 20 or 30 millions of floating Securities, yet it was much more prudent to do so, and to meet the difficulties of the State, whatever they might be, fairly and manfully in the face, than to attempt to gain a temporary relief by embarking on that course, whose fatal facility had led so many Governments to the result of a forced issue of inconvertible Paper.

The other consideration which weighed with the Government in not pressing for Notes of a smaller denomination than 20 Rupees, was that which he had already adverted to in regard to Gold. He had stated the reasons why, to his mind, if we could have a Sovereign or Gold Mohur Currency established, it would supersede the use of small Notes; and as long as there was a chance of obtaining that result, and while that experiment was in progress, he thought it would be better not to have a Small Note Circulation. That being the conclusion to which the Committee had come, the result would be that, under the Currency Scheme which he now proposed, we should have a Note Currency representing a Silver standard for amounts above 20 Rupees, while for smaller amounts we should have

the present Rupee Currency with the chance of an auxiliary circulation of Gold at a rate which might be subject to alteration from 6 months to 6 months.

There was another minor amendment which he thought it necessary to notice as being interesting to Merchants in relation to their dealings in Coin and Bullion at the Mint. It had been thought advisable to continue the Tolah and not to introduce the Ounce weight as proposed by the Original Bill. Silver fit for Coinage would turn out 979 Rupees per 1,000 Tolahs which was the actual Mint rate. The Mint charged, as many were aware, 2 per cent. for seignorage, and ½ per cent. for re-melting, and there was a slightly fluctuating refusage charge which only produced 475 Rupees a year, which he proposed to abolish as it occasioned complication and inconvenience. Merchants, therefore, importing Silver would be able to exchange it at the accustomed rate of 979 Rupees per 1,000 Tolahs for Bank Notes at the Mint, instead of getting Mint Certificates as heretofore having possibly twenty or thirty days to run.

He did not know if there were any other amendments which called for special notice. But if there were any, they would be seen by reference to the amended Bill, which, together with the Report of the Select Committee, would be put into circulation immediately. The Bill would shortly come under the consideration of a Committee of the whole Council, after which it would be sent home for the approval of the Secretary of State in Council, which he (Mr. Laing) believed it would receive. The Bill would probably be returned in the course of three months, when it would be read a third time and passed, and in the meanwhile, the Government would proceed to complete the detailed arrangements with the Banks and other parties for putting it into immediate practical operation.

He had commenced his remarks by saying that we must not think that, in passing this measure we were legislating for to-day or to-morrow, but for future generations; and he hoped that our legislation would conduce to the future prosperity of India. This great Empire had been formed within the last two centuries by a series of successful achievements in war, and he would fain hope that an era of future peace and prosperity was now dawning. With the present Government and Legislature of India rested the responsibility of consolidating that mighty Empire which had been won by so many heroic achievements, and of laying broadly and wisely the foundations of an enduring system. In such a system a Currency adapted to the expanding wants of the community was not an unimportant element, and every step however cautious, which led to that result, was a step in the right direction. The measure now proposed was not so large or ambitious as that which was originally proposed to them, but it was more in accordance with the example of England and with the weight of practical authority and experience. The Members of the Government and of the Select Committee had been unanimous in regarding it as a sounder and safer measure, and he trusted that this unanimity might be an assurance that, in the event of its passing into Law, it might be found to lead to the desired consummation of promoting the lasting prosperity and welfare of India.

PETITION OF KHOSHAL MUNDUL AND OTHERS.

THE VICE-PRESIDENT in presenting the Report of the Standing Orders Committee on the Petition of the Indigo Planters' Association, relative to the Petition of Khoshal Mundul and others, said that he was very happy to be able to inform the Council that no copy of the late Petition had been sold by the Council. After the debate which took place last Saturday, he had requested the Clerk of the Council to stop all further sale of that Petition, and at the same time to ascertain what number had been sold. It appeared, on enquiry, that only twelve copies had been issued for the purpose of being sold, and he was happy to

say that they had all been returned at the request of the Clerk. The only copies which had been circulated were those which, according to the Standing Orders, were required to be circulated among the Members of this Council and to the Government; and two copies had been sent to the Indigo Planters' Association, at the request of their Secretary. So far as further publication was concerned, he was happy to say that this Council was in no way responsible.

WRECKED BOATS.

MR. SCONCE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "for the preservation of property recovered from Wrecked Boats."

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Laing be added to the Standing Orders Committee.

Agreed to.

PETITION OF KHOSHAL MUNDUL AND OTHERS.

THE VICE-PRESIDENT gave notice that he would next Saturday move the adoption of the Report of the Standing Orders Committee on the Petition of the Indigo Planters' Association, relative to the Petition of Khoshal Mundul and others.

The Council adjourned.

Saturday, February 23, 1861.

The Hon'ble Sir H. B. E. Frere, *Senior Member of the Council of the Governor-General*, Presiding.

Hon'ble C. Beadon,	A. Sconce, Esq.,
Hon'ble Major Genl. Sir R. Napier,	C. J. Erskine, Esq., and
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.
H. B. Harington, Esq.,	

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH.)

THE PRESIDENT read a message informing the Legislative Council, that the Governor-General had assented to the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George."

RELIGIOUS ENDOWMENTS.

THE CLERK reported to the Council, that he had received a communication from the Home Department, forwarding papers on the subject of the Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code," regarding Religious Endowments.

MR. BEADON moved that the communication be referred to the Select Committee on the Bill.

Agreed to.

POLICE.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "for the regulation of Police within any part of the British Territories in India to which it may please the Governor-General in Council to extend its provisions."

PAPER CURRENCY.

MR. LAING postponed the Motion (which stood in the Orders of the day) for a Committee of the whole Council on the Bill "to provide for a Government Paper Currency," in consequence of the unavoidable absence of the Chief Justice.

WRECKED BOATS.

MR. SCONCE said that, for a similar reason, he wished to postpone the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "for the preservation of property recovered from Wrecked Boats." He understood that the Honorable and learned Vice-President entertained some objections to the Bill as it now stood.

PETITION OF KHOSHAL MUNDUL AND OTHERS.

SIR CHARLES JACKSON said that the Chief Justice had requested

him to postpone this Motion, of which he had given notice, for the adoption of the Report of the Standing Orders Committee on the Petition of the Indigo Planters Association relative to the Petition of Khoshal Mundul and others.

NOTICES OF MOTION.

MR. BEADON gave notice that he would next Saturday move the first reading of a Bill "to provide for the punishment of breach of contract for the cultivation, &c. of Agricultural produce," and also of a Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.")

RELIGIOUS ENDOWMENTS.

SIR BARTLE FRERE moved that Mr. Beadon be added to the Select Committee on the Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code."

Agreed to.

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that Sir Robert Napier be added to the Select Committee on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON said that, in the absence of the Honorable Member for Madras, he had the honor to present to the Council a paper received from the Government of Fort St. George relative to the Bill introduced by him to amend Act VIII of 1859, known as the Civil Procedure Code, and to move that the paper be printed and referred to the Select Committee now sitting on the Bill.

Agreed to.

MR. HARINGTON said, he had also received a letter from the Secretary to the Government of the North-Western Provinces with enclosures, on the subject of the working of the same Code, and he begged to move that extracts from these papers, so far as they related to the Bill already alluded to as having been brought in by him to amend Act VIII of 1859, be printed and referred to the Select Committee on that Bill. The papers were voluminous, and he did not consider it advisable or necessary to put the Government to the expense of printing the whole of them. They would lie on the table, and any Honorable Member who wished to read them would have an opportunity of doing so.

Agreed to.

PRISON AT THE NEILGHERRIES.

SIR CHARLES JACKSON gave notice that he would next Saturday ask the following question:

What progress has been made in erecting a Prison at the Neilgherries, and what accommodation such Prison will afford for European and American convicts sentenced to Penal Servitude?

The Council adjourned.

Saturday, March 2, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. B. Harington, Esq.,
Hon'ble C. Beadon,	A. Scoone, Esq.,
Hon'ble S. Laing,	and C. J. Erskine, Esq.,

PAPER CURRENCY.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association, concerning the Bill "to provide for a Government Paper Currency."

And a Petition from the Bengal Chamber of Commerce, concerning the same Bill.

MR. LAING said, he proposed to move that the above Petitions be read,

when we came to consider in Committee the Clause to which they related.

THE CLERK reported to the Council that he had received, by transfer from the Home Department, a copy of a Despatch from the Secretary of State, regarding the preparation of Codes of Civil and Criminal Procedure for the Courts established by Royal Charter.

SIR BARTLE FRERE moved that the Despatch be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

BOMBAY MUNICIPAL ASSESSMENT.

MR. ERSKINE (in the absence of Sir Charles Jackson) presented the Report of the Select Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a fund for Municipal purposes in the Town of Bombay)."

FINANCES OF INDIA.

MR. ERSKINE said that, before the Council should proceed to the other business of the day, he wished to put a question to the Honorable Financial Member of Government, relating to a matter of some public importance. In the comparative statement of receipts and expenditure lately published by order of Government, under date the 19th of February 1861, there was an item of £474,324 entered as a charge against the Government of India on account of loss by exchange in Railway transactions in 1860-61; and what he wished to ask was, whether the loss of this sum by exchanges in 1860-61 was due to any specific and irrevocable engagement between Government and the Guaranteed Railway Companies? what would be the probable results of that engagement in future years? and whether anything was to be done to restrict such a charge in connection with new Railway undertakings?

MR. LAING said that the loss under the head of Exchange in Railway Accounts was, no doubt, entered in a way which appeared to be rather obscure, and which he thought ought to be corrected in future accounts. The loss arose from a Clause in the contracts with the Railway Companies, by which they were entitled to pay in Sterling money at the rate of 1*s.* 10*d.* per Rupee, so that the loss in question really amounted to so much discount on the Capital raised through the Companies. The effect was almost precisely the same as if the guarantee given to the Railway Companies had been 5½ per cent. on the actual, instead of 5 per cent on the nominal Capital. Such was the contract with existing Companies, which, of course, could not be broken through. It would certainly not be resorted to if the Government were obliged to raise the money themselves for future operations. He could not say what the amount would be in future years, because it would depend entirely on the amount which the Railway Companies might be able to raise under their existing contracts. He might observe, however, that the Government had written home on the subject with a view to guard against such a disadvantageous rate of exchange being given in any future arrangements which might be made with Companies.

BREACH OF CONTRACT.

MR. BEADON moved the first reading of a Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce." He said that the object of the Bill, of which he now proposed to move the first reading, was to extend (with certain modifications) to the wilful breach of contracts for the delivery of agricultural produce the provisions of Act XIII of 1859, to punish breaches of contract by artificers and workmen; and the effect of the Bill, if it were

passed into law, would be that persons who entered into contracts for the delivery of such produce, if they fraudulently break them, instead of being only subject to a civil action for damages, would also, if they persist in their refusal, be liable to penal consequences.

He need not remind the Council of their proceedings of last year, when, in consequence of the excited state of some of the indigo districts of Bengal and the imminent risk of disturbance, a temporary Act was passed, giving the Magistrates power to take cognizance of complaints made by Indigo Planters against ryots for breach of their then existing engagements, and the Government of Bengal was enjoined to appoint a Commission for the purpose of enquiring into and reporting on the system and practice of indigo planting in Bengal, and the relations between the Planters and the ryots.

A Commission, as the Council knew, was appointed, and, after a careful enquiry, protracted through a period of nearly three months, submitted a report, which, together with a paper recorded thereon by the Lieutenant-Governor, had recently been laid on the table.

Of the manner in which the Commissioners performed their delicate and responsible duty, he was hardly called on to speak. Testimony had already been given in this place by a learned Judge, who was no longer a Member of the Council, to the strict impartiality and great ability with which the enquiry was conducted. And, however opinions might differ as to the conclusions to which the majority of the Commission and the dissentient members had arrived, and the recommendation they had severally made, there could be no question that the report and the documents which accompanied it present a most valuable mass of information drawn from all available sources, and afforded to every one the means of forming a satisfactory judgment as to the causes which led to the recent rupture between Planters and ryots, and to the means necessary for placing the relation of these two important classes on a sound and satisfactory footing.

He would now briefly advert to the recommendations made by the members of the Commission. Those of the majority were—that the number of Magisterial Sub-divisions should be increased, that a better Police and Civil Courts of prompt and effective procedure should be provided, and that attention should be paid to the working of certain Clauses in the Rent Act. The majority were opposed to the appointment of Honorary Magistrates, to the employment of special agency for the adjustment of indigo disputes, to the continuance of Act No. XI, or the enactment of any other summary law, and to the registration of indigo contracts. The minority, on the other hand, while they agreed as to the necessity for an organic improvement in the Police, proposed that the people of Bengal should be disarmed, that the law should provide more effectual punishment for the instigation of affrays, that an Act should be passed to make the breach of engagements to cultivate and manufacture indigo criminally punishable, and that a special agency should be employed to settle disputes connected with indigo, and to report on indigo affairs to the Government.

The Lieutenant-Governor, in his able review of the Report of the Commissioners, had entered very fully into all these recommendations, and had given at length his reasons for adopting some and rejecting others. For these he (Mr. Beadon) would take the liberty of referring the Council to the Lieutenant-Governor's Minute, observing only, by way of a general statement of what had been done, that the number of Magisterial Sub-divisions had been increased, so that now in the indigo districts of Nuddea and Jessore there was not a spot more than 25 miles distant from a Magistrate's Office, while the average distance was, of course, much less; that the appointment of Honorary Magistrates and Justices of the Peace in every District had been sanctioned by the Government of India; that measures

had been taken, and, if the law should be slightly altered, as he intended hereafter to propose, would speedily be completed, for the establishment of a Civil Court of summary jurisdiction without appeal in every rural District where such a Court was required ; that the reform of the Police, on the principles embodied in the Bill now before the Council, would be proceeded with as soon as possible ; that a project of law for the general registration of contracts, including of course those relating to indigo, was already under the consideration of the Council ; and that provision had been made in the Penal Code for the punishment of persons who instigated affrays.

He now came to the immediate subject of the Bill, and in order to put the Council in possession of the grounds on which a somewhat similar measure had been proposed by the dissentient minority, he would read an extract from their Minute :—

" Then we are of opinion that while on the one hand effectual measures have been taken for the protection of the ryot, on the other hand the just interests of the Planter should be guarded and cared for.

The precarious nature of the crop in Lower Bengal, the critical emergencies which arise on the cultivation of indigo, have been shown in the Report ; similar emergencies may arise even in the manufacture. Thus it is possible, and does actually happen, that the Planter is involved in sudden difficulties through no fault of his own. His ryots may have taken advances, and then refuse to sow ; or they may delay to sow within the few hours during which alone the sowing for a season's crop will be possible. There is hardly any other product, the culture of which is liable to such a crisis as this. Then, in the midst of the manufacturing season, the hired laborer may absent himself, or, contrary to agreement, strike for higher wages. The ryot (especially if, as suggested, he received a considerable payment, whether a crop is cut or not) may refuse to exert in the case of inundation or destructive accidents. Now it appears to us, that wherever the conduct of any business is from its nature critical ; wherever breach of contract would, if not immediately redressed, cause irreparable loss or inconvenience to the opposite party ; the policy of the law has been to render such breach of contract liable to criminal penalties. Such has been the principle followed in the case of domestic servants, of workmen, of railway laborers, and, as we understand, in the case of coffee-planters ; and recently this appears to have been the principle which guided the Legislature in passing the summary and temporary Act for indigo cultivation during the season of 1860. If the principle has been correctly described above, then we submit that it applies in the case of the cultivation and manufacture of indigo cultivation as much as to any case whatever. Indeed, we believe, that in none of the cases in which the principle has been sanctioned, is the business more critical, or the inconvenience more immediate, or the loss more difficult of reparation, than in the case of indigo cultivation.

We would therefore recommend that the Act XI of 1860, rendering breaches of contract to cultivate indigo criminally punishable by the Magistrate, be made permanent with certain modifications. And we would extend it to breaches of contract to manufacture indigo, so that a ryot who has engaged to cultivate, or a laborer who has engaged to manufacture, may be by law compelled summarily to fulfil his engagement.

If it be urged, in opposition to the enactment of such a law, that the crop is unremunerative to the ryot ; that the ryot is not practically free ; that force and violence are already used ; that the police are inefficient ; that the planter is already the stronger party ; then we would beg that the matters previously urged may be borne in mind ; and we submit that these objections, however applicable under the system heretofore existing, will not apply to that reformed system which we seek to introduce. If the improvements which we urge shall be carried out (and unless they are carried out, more or less, we fear that the very existence of indigo cultivation at all will be jeopardized), then we submit that the cultivation will be remunerative to the ryot, that the ryot will be a perfectly free agent, that force and oppression will no longer be possible, that the police will not be inefficient, and, lastly, however powerful the planter may have heretofore been, yet he is not now the stronger party, as compared with the ryot. Indeed, the ryots have shown themselves to be aware of their own right and interests, and resolute in using their physical force and numerical strength in resistance to any thing like coercion.

Then it may be objected, that the new Civil Procedure is prompt and summary ; that the old delay of the law is now done away with and that the present law will afford the planter all the redress he can require. Now, we are fully sensible of the improvement which has been effected in the Civil Procedure, though it remains to be seen whether justice will in practice be speedy. But facility and speed in obtaining justice are not sufficient in cases where the breach of particular contracts is specially and peculiarly productive of loss or inconvenience. In cases of this class, the law has prescribed criminal penalties in order to deter parties from breaking such engagements. It is the moral effect of threatened punishment that is needed. At the Presidency of Calcutta there are Small Cause Courts, and every possible facility for obtaining justice, still the criminal penalties are

needed for servants, who abscond from service, and for workmen who desert their work."

The minority went on to observe—

"Further, it may be said, that if a law of this nature be enacted for indigo contracts, it may be equally required for silk contracts, and perhaps other similar contracts: doubtless this is true. And if the just protection of the silk interest, or other interest similarly circumstanced with indigo, should require a special contract law, such lawful assistance might, we think, with good policy be conceded."

And they came to this conclusion:—

"We would then make the breach of a registered contract to cultivate indigo punishable by a Magistrate, but not any other contract except a registered one. It would be very desirable to make the terms of such contracts explicit, so as to include the whole process of cultivating, from the ploughing to the cutting, and delivery at the factory. We do not think that registration of agreements on the part of coolies to manufacture indigo would be necessary. We would, however, have breaches of such agreements punished by a Magistrate in the same manner as breaches of contract on the part of workmen or domestic servants."

He would not take up the time of the Council by reading the arguments brought forward on the other side of the question by the majority of the Commission, because these arguments were epitomised in the Lieutenant-Governor's Minute, whose opinion, adverse to the proposal, was thus expressed:—

"Two members of the Commission, in a separate Minute, recommend the enactment of a law rendering breach of an indigo contract, on the part of a ryot, a criminal act punishable by the Magistrate. The majority of the Commission strongly object to any such law, and I fully concur in their objection, for the reasons they assign. No one-sided legislation is ever justifiable, and I believe such legislation in the end generally injures the interest it is meant to favor. An indigo contract differs in no respect from any other sort of contract for the delivery of goods. To subject either one of the two parties in such a contract to be treated as a criminal, for what is acknowledged by the general law not to be a crime, seems to me quite indefensible. All the arguments above urged against any special legislation for indigo business at all, apply with peculiar force against special penal legislation, in a sense contrary to all the received principles of distinction between Civil and Criminal Law. In 1810, in 1832, and in 1835, in India and at home, the highest Authorities have concurred in rejecting such a law.

Indeed, a proposition for such a law seems to me to follow strangely upon the result of the Commission's Inquiry. The whole Bengal indigo system has been upon its trial, and though only four out of five Commissioners have signed the Report, I do not understand that the fifth Commissioner, who represented the Planters, differs from his colleagues substantially, in regard to the findings on matters of fact; and he has signed with another member a separate paper, which, in my judgment, is as conclusive against the system as the body of the Report itself is. The result is, that the ryot is found guilty of nothing, and that his complaints are in the main fully established. It would be natural, upon such a finding, to discuss some project of a special law of protection in his favor; but to follow up a verdict in favor of a successful complainant by a sentence of subjection to a special penal law, making him criminally liable for what no other person is criminally liable, does seem to me to be somewhat hard upon him.

I agree with the majority in thinking that, in the interest of the Planter, such one-sided legislation would be unwise. The Planter's present difficulty is to get ryots to agree to cultivate indigo, and he must succeed in that, before he can talk of punishing them for not cultivating. If the object were to make indigo cultivation still more unpopular than it is to stigmatise it by making those who undertake it liable to be treated as criminals, might be a wise measure; but as the object is the contrary, I cannot think it would be a wise measure."

So far as this Bill was concerned, he (Mr. Beadon) thought he could show that the Lieutenant-Governor's objection, that the indigo ryot would be made liable to punishment in a way in which no other person was liable, did not apply. The Lieutenant-Governor further condemned the proposed law as unjust to the ryot and injurious to the Planters themselves. With respect to injustice towards the ryot, he (Mr. Beadon) would observe that such a law could be said to be unjust only in case it were made retrospective in its operation, and applicable to the breach of contracts already existing; whereas this Bill was purely prospective in its nature, and applicable only to contracts which might be made after it came into force. Every ryot would be at perfect liberty to enter into such contracts or not as he pleased, with full knowledge of the consequences of his act. It might also be said with some show of reason, that such a law would be unfair if it were

to apply only to indigo ; but this was not the case. As to its being injurious to employers, he thought it must be admitted that employers were the best judges of what would conduce to their own interests. A general desire had been expressed for such a law, and it had appeared to the Governor-General in Council, that to capitalists engaged in developing the resources of India, especially in turning to account its boundless agricultural capabilities, the success of whose operations depended upon the honest performance of their contracts by a multitude of persons raised little, if at all, above the condition of day-laborers, of weak moral perceptions, easily seduced from honest courses, rarely possessed of means to repair the damage caused by their default, and very apt at concealing such means as they possessed, some special protection was necessary.

Such protection had long been enjoyed by masters against their servants, and it had recently been extended by this Legislature to masters and employers against workmen and artificers who have received an advance, and wilfully failed to execute their stipulated work, as well as against petty contractors employed in public works ; and he saw no good reason why such protection should not be given to Planters, Manufacturers, and others against those who, after receiving advances for the delivery of produce, wilfully neglected to perform their part of the agreement. A question indeed had been raised, whether Act XIII of 1859 was not so worded as to admit of its being extended to indigo districts, and put in force against defaulting indigo ryots ; but as such an application of the law was, no doubt, beyond the intention of the Legislature who passed it, it had not been thought proper to act on that view ; and, indeed, the Act, as it stood, if made applicable to indigo contracts, would be open to much objection.

It was not intended, however, to confine the action of the Bill to contracts for the delivery of indigo ; it had been framed, so as to embrace all kinds of agricultural produce, and its provisions were equally applicable to tea, sugar, coffee, cotton, and other valuable staples. The Government had recently received from the managing proprietor of extensive sugar-works in the Ganjam district, an urgent appeal for such a law, pointing out in forcible terms the injury to which he was exposed, and the impossibility of protecting himself, except by means of a summary penal law, from the fraud of those who contracted under advance, to supply him with the material of his manufacture, and then parted with their produce to others.

He would read a part of the letter which had been addressed to the Government by this gentleman, Mr. Boothby, Managing Partner of the Aska Sugar Concern, under date the 29th October 1860. He said :—

"In forwarding a copy of the letter noted in the margin, together with proceedings of the Madras Government, I have the honor to submit an urgent appeal to the Governor General in Council for the protection of the interest committed to my charge.

It will be seen from this correspondence, that I have long had reason to complain of the inadequacy of the law to deal with cases of fraudulent misappropriation of cash advances to ryots for sugar-cane planting, and not only am I still compelled to urge this complaint, but a recent decision of the Court of Sudder Adawlut at Madras has had the effect of placing this establishment in a very critical position.

In the month of May last, I had occasion to send in charges of fraud against certain ryots, who, having in the first instance taken advances for planting sugar-cane, had subsequently not only assigned their crops over to my Agents to examine them, but in the presence of the said Agents had loaded the produce thereof on carts with the avowed intention of taking it to the factory, and yet, instead of doing so, stopped at a village on the road, and sold the produce to native sugar-dealers.

The copy of the proceedings in this case, which I have now the honor to enclose, will show that the charge of fraud was fully substantiated, and that the guilty parties were sentenced to fine and imprisonment with hard labor in irons.

This sentence, fully approved of by Mr. Forbes, the Collector and Agent to the Governor of Fort St. Geoge, in Ganjam, has been quashed by the Court of Sudder Adawlut, although Mr. Forbes made the matter the subject of special appeal to the Sudder Court, in order to show that, as it had been proved that the identical goods, shown as belonging to the Aska Concern, had been sold to other parties, a fraud

had been committed, and that therefore it was a case for Criminal and not for Civil process, as decided by the Sudder Court."

* * * * *

"And to show that I am not merely anticipating an evil, I can state that the case mentioned, in which I sent in charges of fraud, was only one out of a very large number of similar cases. From cane plantations of the value of 1,30,000 Rupees visited by me and my Agents, and assigned over to us as the property of the concern, fully 20,000 Rupees worth of the produce was not delivered to the Factory, being fraudulently disposed of elsewhere; and if this occurred previous to the decision of the Court of Sudder Adawlut, that such conduct is not Criminal, what must be expected under present circumstances.

In this District, no plea can be advanced in excuse of the ryots for such conduct, as they are wholly and entirely free agents in receiving these advances and cultivating sugar-cane—in fact, it is they who importune us for advances, which we give them on infinitely easier terms than they can get elsewhere; and as regards the price we pay the ryots for the raw material, it is confessedly a highly remunerative one, we having increased it just 30 per cent. in the last ten years.

With regard to the amended Civil Code lately introduced, without undervaluing it in the least, and indeed thankfully acknowledging it as a great boon, I would beg to submit that it cannot meet the requirements of such cases as those of which I have to complain; and until an Act is introduced, by which they can be dealt with summarily before a Magistrate, it is vain to look for any abatement in the system of deliberate fraud so rife at present in this District, and which the Collector Mr. Forbes has pointed out as being 'as demoralizing to the ryots as it is vexatious and injurious to merchants.'"

He thought that these extracts showed pretty clearly, that the want of a law to compel the performances of such contracts by the fear of penal consequences was not confined to the indigo districts.

The Indian Law Commissioners held that, in general, a mere breach of contract ought not to be an offence, but only the subject of a civil action, and few would be disposed to differ from them. But to this general rule, they admitted exceptions, and accordingly the Code provided for the punishment of certain breaches of contract, and left untouched the special laws which provided punishment for servants who left their employment or neglected their work, for seamen who deserted their ships, for artificers and others who failed to perform their stipulated engagement, for defaulting contractors on public works, and others. The question then was simply, whether ryots and others who, on consideration of an advance, agreed to deliver a certain quantity of indigo or other produce, ought not to be brought within the category of these exceptions? He thought that ample ground had been shown for answering this question in the affirmative. There was no difference in principle between the case of a mason who contracted to build a stable, or a laborer who engaged to work for so many days, and that of a ryot who engaged to deliver produce. That a ryot was a laborer, whatever else he might be, there could be no doubt. It was for the produce of his labor that he contracted, and his field was no more to him in fulfiling his agreement than his skill and tools to the workman, or his capital to the petty contractor.

If a ryot took an advance from an Indigo Planter and engaged to deliver a certain quantity of produce, intending at the time not to fulfil his engagement, he was held to be guilty of cheating. But how could such intention be possibly proved? and what was the extent of the difference in point of moral guilt, between a man who made an agreement, intending at the time to break it, and one who made an agreement in good faith and resolved, an hour or a month afterwards, to play false? It was not, however, the object of this Bill to bring such default within the definition of cheating, but simply to follow the precedent of the Act of 1859, and compel either the performance of the agreement or the payment of damages, and to punish the defaulter only in the event of his default being persisted in.

He would now offer a few remarks on the details of the Bill.

It applied only to contracts under advance. In this he had followed the principle of the Act of 1859, but he was satisfied that, by limiting the operation of the penal law to contracts made on consideration of an advance, he dealt with the only class of cases in which exceptional measures for the preven-

tion of fraud were called for, and at the same time afforded indirectly an inducement to ryots and others to contract without advance ; and if, by this means, the system of advances so universally prevalent in India, were to any extent discouraged, it would be an unquestionable benefit.

The Bill then followed generally the model of Act No. XIII of 1859, but Clauses had been added analogous to those introduced into Act XI of 1860, for preventing on the one hand the exercise of fraud or force in obtaining contracts, and on the other the abetment of the breach of them. But the most important Clause was that which defined exactly the nature of the contracts that could be made the subject of complaint under the Bill. In the first place it was confined to contracts in writing duly witnessed, whereas the Act of 1859 included mere verbal contracts. Then it referred only to contracts that might be made after the Bill became law. It had been represented to him strongly by gentlemen interested on behalf of the Indigo Planters, that the law ought to have a retrospective effect and apply to the breach of all contracts already entered into, or at any rate of contracts that have been made since the temporary Act of 1860 expired. But apart from general consideration, there were two special reasons which must prevent him from proposing the Bill to the Council, except as a prospective measure. The one was, that in the Proclamation published by the Lieutenant-Governor in September last, with the sanction of the Government of India, a promise had been made to the ryots that their then existing contracts would not be made the subject of another summary law : the other was that the character of many of the engagements that had been put forward in support of complaints preferred under Act XI of 1860 was not such as would justify him in asking the Council to make the breach of them penal. Then it was provided that the Bill should not apply to any contract not filed in the Magistrate's Office within a month from execution. This he admitted was an imperfect substitute for registration, but it was impossible to frame a satisfactory law applicable only to contracts for the delivery of agricultural produce, and in the meanwhile the fabrication of contracts, long after the alleged date of execution, would be prevented. The Bill was framed so as to include contracts only for one year, and for produce valued at fifty Rupees. A desire had been expressed that these limits should be extended, and he would have no objection to such extension if sufficient grounds were shown for it. The object in fixing the duration of the contract was to discourage the making contracts for an indefinite period ; but if the custom were to give contracts for two or more years, so long as it was for a fixed period, he saw no great objection to the change. The reason for assuming a limit of fifty Rupees was that the operation of the Act might be confined to persons as nearly as possible in the condition of laborers and in the same class of society as those affected by the Artificers' Act. If there were not some limit, the law might be put in force by one trader against another with whom he had made an agreement ; but he was not prepared to say that the limit might not be enlarged to some extent, and he would leave that point open to future consideration.

It had been his intention to give an appeal from the decision of the Magistrate, but on full consideration he had come to the conclusion that it was best for all parties that the Magistrate's decision should be final ; and this was the more suitable, as he proposed that the powers of a Magistrate under the Bill, should be exercised by the Judge of a Small Cause Court, wherever such a Court might be established in the interior.

He had been asked, what security the Bill gave to ryots against being cajoled or forced to enter into contracts, and the answer he gave was that the Bill provided for the consequences of such fraud or force if attempted, and that the registration of the contracts in the Magistrate's Office would, at any

rate, afford evidence of the timely assertion that such contracts had been made. It had been abundantly shown, too, that the people, when once acquainted with their rights, were well able to assert them; while it must be remembered that employers, if they had heretofore resorted to illegal means to protect themselves, had had no adequate protection of law, such as it was now proposed to give them.

The Bill was read a first time.

SMALL CAUSE COURTS.

Mr. BEADON, in moving the first reading of a Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)," said that he would remind the Council that, when that Act was brought up before the Council for third reading, it was recommitted with a view to the addition of a Clause which provided that no Judge of any Court constituted under that Act should exercise any Civil jurisdiction, except under the provisions of the Act. That Clause was introduced on the Motion of the Honorable and learned Vice-President, in order to prevent the local Governments from investing one Moonsiff with the powers of a Small Cause Court Judge because he was considered fit to exercise them, and withholding them from another Moonsiff because he was considered unfit; and he (Mr. Beadon) believed that no one in the Council doubted that the object was a right one. But it was not then foreseen what the effect of the Clause would be, and he would now describe it. The Lieutenant-Governor of Bengal, on being requested to consider how the wishes of the Government of India and the Legislature in regard to the establishment of Courts of Small Causes in the Mofussil might best be carried out, addressed a letter to the Government of India through his Secretary, on the 17th of November last, from which he (Mr. Beadon) would read the following passage:—

"The plan which the Lieutenant-Governor had formed was to appoint four, five, or six, say on an average five, Judges of a Small Cause Court in each District experimented upon, one in each Sub-Division; and to make these Judges also Principal Sudder Ameens and Sudder Ameens of the District. This would have given them a good deal of work besides the Small Cause Court work, which alone would not occupy a great part of their time, and it would have relieved the Judge of much appellate work. To these powers he proposed to add also revenue powers, to enable the Small Cause Court Judges to try Civil suits for rent, &c., and Magisterial Judicial powers, without, of course, any Police powers. In this manner these Judges would have been Civil and Criminal Judges in all Departments within their Sub-Divisions. It seems to the Lieutenant-Governor that the effectiveness of the Judicial Administration would be very greatly increased by such an arrangement; whilst some saving might have been effected towards meeting the extra expense, by abolishing the Sudder Ameen and by reducing the number of Moonsiffs, whilst the present District Principal Sudder Ameen would have stood for one of the required number of Sub-Divisional Judges. On consultation with officers of judicial experience, well qualified to judge, he found that, besides the expense, the only difficulty anticipated was the paucity of experienced Judicial Officers fit for the very responsible office of Small Cause Court Judge; but this, though fatal to a general and simultaneous introduction of the scheme, was not fatal to the experiment.

"On looking, however, more closely into the Act, the Lieutenant-Governor found, to his very great disappointment, that it contained a Clause which prohibits a Judge of a Small Cause Court being also Judge of any other Civil Court. He apprehends that this Clause of the Act must be considered fatal to the measure, for the mere Small Cause Court work, which now only occupies a part, and no great part, of the time of, on an average, nine Moonsiffs, could not occupy all the time of five Judges, even with the addition of Criminal work; and a Sudder Ameen, and one, or sometimes two, Principal Sudder Ameens, would have to be retained, as formerly.

But, if His Excellency in Council does not think this objection fatal, the scheme can be tried still in one or two Districts, for which the Lieutenant-Governor believes a sufficient number of competent instruments are available. The expense may be estimated at less than 50,000 Rupees a year for each District."

He (Mr. Beadon) need hardly say that it was impossible for the Government, under present circumstances, to incur so large an expenditure; and

unless Small Cause Court Judges were empowered to perform other judicial duties, so that their time might be fully occupied, and the number of other Judges diminished, the project of establishing Small Cause Courts in the Mofussil must necessarily fall to the ground. Under these circumstances, he did not think that the Council would have any objection to the repeal of that Clause, especially if assurance were given by law or otherwise, that the practice which that Clause was intended to prohibit should not be resorted to. With these observations he begged to move that the Bill be read a first time.

The Bill was read a first time.

PAPER CURRENCY.

MR. LAING moved that the Council resolve itself into a Committee on the Bill "to provide for a Government Paper Currency;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I (the repealing Clause) was passed after a verbal amendment, and with the insertion of the "1st day of March 1862" in the blanks for the date from which the repeal should take effect.

Section II was passed after a verbal amendment, and with the insertion of the "said 1st day of March 1862" in the blanks as the date from which the prohibition against the issue by any body, corporate or person, of notes, &c., payable to bearer on demand, should come into operation.

Section III provided as follows :—

"There shall be established by the Governor-General of India in Council a department of the Public Service, to be called the Department of Issue, either in connection with the Mints or otherwise, and from and after the day of there may be issued from the said Department, as hereinafter provided, Promissory Notes of the Government of India payable to bearer on demand, for such sums, not being less than twenty Rupees, as the Governor-General of India in Council shall direct."

MR. ERSKINE said, he understood that it had been the intention of the Honorable and learned Judge, who was unfortunately and unavoidably absent, to propose that the minimum denomination of notes to be issued under this Section should be for ten Rupees each. Under the circumstances, he (Mr. Erskine) did not wish himself to offer any remarks on this point at present. He would merely ask the Honorable Member in charge of the Bill, on behalf of the Honorable and learned Judge, whether or not he considered that the point might now be reconsidered with advantage.

MR. LAING said, he should first move that the Petitions which had been presented to the Council to-day be read at the table.

The Motion was carried, and the Petitions were read accordingly.

MR. LAING then said that, if the Honorable and learned Judge (Sir Charles Jackson) had not been prevented from attending to-day, he understood that it was his intention to have moved an amendment for retaining notes of ten Rupees. It would perhaps be therefore convenient that he (Mr. Laing) should state the course which the Government proposed to take. There could be no doubt that our Currency would be left in a very imperfect state, if there should be no medium of exchange but Silver for amounts lower than twenty Rupees. In a country like this, as had been stated in the Petitions, by far the greater number of transactions were for smaller sums. Therefore, in making a new system of Currency for all India, it was obvious that the minimum denomination should not be too high. With this view the Government at first intended that notes as low as five Rupees should be issued. But the view taken by him and others was that the present was merely a tentative measure, and that we should go on slowly and cautiously, as there would be considerable difficulty in familiarizing the great majority of the people to a Paper Currency, instead of the existing Silver Currency. But great doubt existed whether the premature introduction of

notes of so low an amount among a population generally ignorant of such matters and extremely suspicious of any novelty, before they had become familiarized with paper money by the circulation of larger notes, might not defeat the object in view by creating a prejudice against paper money altogether. Without venturing to speak very confidently of himself, for his experience of India had extended over only two months, he was decidedly under the impression that a Gold Currency would be more readily received, and more acceptable to the Native population in the interior than a small Note Circulation. A Gold Currency would also have the advantage of carrying its own intrinsic value about with it and thus circulating freely from one end of India to the other, which small Notes never could do. For these reasons it had been thought wiser to omit Notes of five Rupees from the Act—at any rate for the present and until the experiment of sanctioning a partial use of Gold had been tried. But the Government had no wish during the progress of this experiment to deprive any District which now had ten Rupee Notes of the convenience attaching to them, and he thought it better therefore that a discretionary power should be given of issuing Notes to the limited extent of ten Rupees in those Presidency Districts or Circles where they were already in circulation, or where a strong case might be established for their introduction. On the whole, therefore, he was disposed to substitute "ten" for "twenty" Rupees at the end of this Section, and he proposed to introduce, after the words "such Promissory Notes" in Section XI, the words "of such denominations as shall be prescribed by the said Regulations not less than ten Rupees," so as to meet the case of country Circles where it might be desirable to issue only Notes of the larger denominations.

As regards the other point referred to in the Petition of the Chamber of Commerce, relative to the adoption of a Sovereign instead of the Gold Mohur Currency, it was premature to discuss it, as the whole measure had to be referred to the authorities at home before it was acted upon; but the subject should have his best consideration.

MR. HARINGTON begged to ask the Honorable Member of Government opposite (Mr. Laing), what were the words which he proposed to introduce in Section XI?

MR. LAING said, he proposed to insert the words "of such denominations as shall be prescribed by the said Regulations not less than ten Rupees," after the words "such Promissory notes."

MR. HARINGTON enquired what were the Regulations referred to in the proposed amendment?

MR. LAING replied, the Regulations to be published by the Governor-General in Council under Section IV.

MR. SCONCE said that he should much regret if the communities that had become accustomed to ten Rupee Notes should be deprived of the convenience experienced in the circulation of notes of that denomination. But even adopting the plan now proposed by the Honorable Gentleman, the alternative was, not to make Notes for ten Rupees legal tender. He would ask the Council to reflect for a moment the very great hardship that a compulsory issue of Notes of the denomination of ten Rupees, if made legal tender, would inflict on the poorer classes of the inhabitants. If he thoroughly understood the practical effect of the whole measure, the result would be that Notes would be circulated, not only in all the Presidency Towns, but also, for example, to the farthest verge of the Presidency of Bengal. The limits of the Presidency Circle which would be first formed were entirely undefined. It might include Calcutta, Assam, or Rangoon. It was a smaller matter to say that it would include Patna and Dacca. What he wished to say was that, however people in Calcutta might be benefited by the use of these Notes, it was quite a different thing to force them elsewhere—Assam, for instance, where means of converting the Notes were not provided. As it was, you would force Notes of a low denomination for the purpose of

continuing the circulation in places where ten Rupee Notes had been already issued, but to the prejudice of other parts of the country where Notes of any denomination were a novelty, and where no opportunity was secured to the people, on whose hands they threw the Notes, to turn them into money. In Calcutta a person had only to cross the street to get cash for his Note. So far, undoubtedly, the issue was a matter of convenience. But how very different would it be elsewhere. After all, what benefit was there to be derived from it? Twenty years ago the circulation of ten Rupee Notes of the Bank of Bengal was not more than one per cent. and is now three per cent. of the entire issue. He would not deprive Calcutta of the advantage which it now possessed; but when you came to throw these ten Rupee Notes over the whole country, it became quite a different thing. He need not remind the Council of the opinion almost universally entertained in England against the introduction of £1 Notes. It was only three years ago that the question was reconsidered in England, when a Committee was appointed by the House of Commons to enquire and report upon the operation of the Bank Acts. The Committee, he believed, unanimously reported that the law which prohibited the circulation of Notes below the denomination of £5 should be adhered to. Some of the witnesses examined were by no means in favor of the Bank Act: witnesses like Mr John Mill and Mr. Newmarch, who both, he need hardly say, were of the greatest authority on such questions as these, and both were nevertheless strongly opposed to the introduction of £1 Notes. In speaking against the proposition of issuing such Notes, Mr. Newmarch adopted the very strong expression that the measure would be received in England with horror. Here, excluding the Presidency Towns, a Paper Currency was almost unknown in the interior of the country. Your measure, as regards the wish and convenience of the people in general, was wholly experimental and tentative. You could not tell now how far twenty Rupees, or even fifty Rupees Notes would be acceptable to the general community, and it seemed to him to be only wise and prudent to watch the progress of the introduction of Notes of the higher values before you adopted a low denomination: yet you now propose that your ten Rupee Notes should be thrust involuntarily into the hands of all men, and at the same time afford no facility for cashing them.

He would repeat therefore that as £1 Notes were repudiated in England, we were the more bound in introducing a Paper Currency in India to regulate the circulation by the principles approved at home. To begin with so low a minimum as 10 Rupees seemed to him to be extremely dangerous. The Honorable gentleman (Mr. Laing), if he rightly understood, supported his amendment on the ground that it would be convenient to capitalists, such as Indigo Planters, to receive remittances in ten Rupee Notes, in order to pay away such Notes as advances upon produce. Now, he must say, if he had been in search of an argument to oppose the adoption of ten Rupee Notes, it would have been this. Conceive a ryot to whom an advance of ten Rupees was payable, to receive the amount by a Note. To him the Note was useless as a means of payment. To a ryot the first necessity was to break up the Note that it might serve for the satisfaction of the smallest transactions, for food, for clothes, for ploughs, for laborers, or for rent. And he must say that, as regards ryots or laborers, the experiment of a ten Rupee currency was, in his opinion, unjust and indefensible. Under this Bill such Notes would have the widest circulation, it might be against the wishes of the people and without the power of convertibility. He would ask the Council to contrast this scheme with the English practice. Here we were to have one office of payment in a circle that would embrace Rangoon to the south, and the remote Districts of Rungpore, Purneah, and Chuprah to the north, or others still more distant. But neither at the Bank of England, nor at any of the branches of the Bank, was

a Bank Note a legal tender of payment. Place the map of England on the map of Bengal and see the positions of the Bank branches. Branches of the Bank were placed everywhere throughout England, and at none of these places was the Note a legal tender. In England you would find that there was a branch Bank at Birmingham, one at Manchester, another at Gloucester, others at Bristol, Swansea, and Plymouth, others at Portsmouth, Norwich, and Leicester, others at Hull, Newcastle, and Leeds. In all there were twelve branches, and at every branch money payable might be paid in coin at the will of the party. But not only so; all Notes issued at the branches were required to be paid at the place of issue. He had not a recent statement of the Bank circulation in England. The statement which he had seen had reference to the issues in 1843, and he observed that out of a total issue of about eighteen millions, the branch Banks issued nearly six millions. Thus it happened that, throughout the surface of England, means were found for cashing Notes amounting to about one-third of the entire issue of the Bank of England.

He would not detain the Council any longer. He had stated at length the objections he entertained to the general issue of ten Rupee Notes, and unless they were not made legal tender, he could not support the Motion before the Council.

MR. HARINGTON said, he ought perhaps to have spoken before his Honorable friend, the Member for Bengal, and he had fully intended to do so, though he was not sorry his Honorable friend had taken precedence of him in the debate, for he had said much that he (Mr. Harington) proposed to say, and he had said it much better than he (Mr. Harington) could have done. He was very sensible that some amount of inconvenience must necessarily result in the Presidency Towns and in the immediate neighbourhood thereof from the withdrawal from circulation of the present Bank of Bengal Notes for ten Rupees, and from the prohibition against the issue by Government of notes of that denomination, contained in the Bill before the Council. He fully participated in the anxiety which had been expressed by the Honorable Member for Bengal to preserve to the Presidency Towns their present Bank Notes of the value of ten Rupees, and he should be very glad if some safe and practicable scheme could be devised which, without causing harm or producing injury or hardship elsewhere, should continue the use of this class of Notes to the Presidency Towns and other places in their vicinity. He was considering whether the words which the Honorable Member of Council opposite (Mr. Laing) proposed to introduce into a later Section of the Bill would admit of this being done, when his Honorable friend the Member for Bengal rose to address the Council. It might have seemed strange that he should have asked the Honorable Member of Council opposite (Mr. Laing) to what Regulations he alluded in his reply to the first question, which he (Mr. Harington) had considered it necessary to put to him, seeing he (Mr. Harington) was a Member of the Select Committee which had proposed the introduction of the provision which allowed of the issue of the Regulations referred to by the Honorable Member of Council, and he ought, therefore, to have been fully informed on the point. But he did not understand that the Regulations which the Government might frame under Section IV of the Bill would embrace the denomination, or have any thing to do with the value of the Notes to be issued under Section III, and it was this which led him to put the second of the two questions which he had asked the Honorable Member of Council. With reference to the Petitions which had just been read to the Council he might say that so sensible had he all along been of the inconvenience mentioned by the Petitioners as likely to result, in so far as the Presidency Towns were concerned, from no Notes being issued under the Bill of a lower denomination than twenty Rupees, and

so anxious had he been that that inconvenience should, if possible, be avoided, that when the Section of the Bill, now under consideration, was discussed by the Select Committee, he seriously deliberated whether he ought not to waive his objections to the issue by Government of Notes of the low denomination of ten Rupees, even supposing it to be insisted upon that those Notes should be a legal tender, and content himself with the exclusion from the Bill of the lowest denomination of Notes mentioned therein, that is, notes for five Rupees. He might have been brought to agree to the settlement of the question in this manner, had it not been for the fact which had been mentioned, both by the Honorable Member of Council opposite (Mr. Laing) and by the Honorable Member for Bengal, that of the entire Paper Circulation of the Bank of Bengal, the Notes issued by that Bank of the value of ten Rupees amounted to only 3 per cent. He regarded this as a very significant fact, and as tending to prove that even in the Presidency Towns, Notes of the value of ten Rupees were not very greatly prized, and that in those Towns there was no considerable demand for such Notes, nor any very pressing necessity for them. If the inference which he had drawn from the fact just mentioned, was correct, what demand, he would ask, was there likely to be amongst the natives in the Mofussil for small Notes? He had no hesitation in saying that, in so far as the Upper Provinces were concerned,—indeed he thought he might say beyond the Presidency Towns generally,—not only had the natives no wish for Notes of the low denomination of five and ten Rupees, but they had no desire for a Paper Currency at all, except, perhaps, as a means of remittance, and to be used in the same manner as Treasury Bills were used, that is, Bills payable on demand at particular Treasuries. He saw reason to believe that the natives would view the issue of a Paper Currency by Government, if coupled with the condition that the Notes issued were to be a legal tender even to the low denomination of ten Rupees, with considerable alarm and distrust. He found the belief which he had just expressed fully confirmed in the papers which had come up from Bombay. He quite concurred with the Honorable Member of Council opposite (Mr. Laing), that they should proceed most cautiously in the introduction of the present measure. He thought they would do well to avoid, at the first introduction of the measure, not only what might cause alarm or add to any present feelings of alarm, but also any thing which might bring them into collision with native prejudices and native habits which had existed for many generations, and that they should look to their Notes becoming acceptable to the natives from their own merits, and the advantages of a Paper over a Metallic Currency, which would soon become apparent, rather than attempt to force them upon the people by making them a legal tender. He had heard it said that the limited circulation of the Bank of Bengal Notes of the value of ten Rupees arose from the circumstance of those Notes not being a legal tender. But this objection applied equally to the other Notes issued by the same Bank, and yet they were not told that the same effect had been produced on their circulation. He could not believe that there was any force in the objection, because he found that with exception to the Bank of England, the lowest denomination of Notes issued by which was £5, the Notes of no Bank were a legal tender. They were told by their late Right Honorable Colleague, Mr. Wilson, that the Banks in Scotland all issued Notes, but they were not a legal tender; that the Notes of the English and Irish Banks were not a legal tender; that the Notes of none of the American Banks were a legal tender; that the Notes of the Bank of France were not a legal tender, and that in the United States, in the North American Colonies, in Germany, Mauritius, and Ceylon, Notes of a very small denomination were current, but not as a legal tender. It was certainly the case that in all these places

the issue of Paper Money was not a Government concern, as it was proposed to be here, but he did not think that that circumstance made any material difference, the more particularly as they were assured that the Government had no intention of forcing the issue of Paper Money. But as he had already said, he should be very glad if even the small amount of inconvenience which might possibly arise in the Presidency Towns from the discontinuance of Bank Notes of ten Rupees value could be prevented without injury to other places. This he thought might be done in one of two ways, either by not making Bank Notes of the low denomination of ten Rupees a legal tender anywhere, or by making them a legal tender only within the limits of the Presidency Towns, and their vicinity within a convenient radius. If the Honorable Member of Council, who was now in charge of the Bill, would consent to either of these propositions, he (Mr. Harington) would vote in favor of the amendment before the Committee. His objection was not to the issue of Bank Notes for ten Rupees, but to their being made universally a legal tender.

THE CHAIRMAN said, he had not come prepared to discuss the question. He did not see any great difficulty in making ten Rupee Notes legal tender within the Presidency Towns only, or allowing them to be issued merely within the Presidency Towns. But the case was quite different, if they were to be introduced into or made legal tender in the Mofussil. The matter appeared to have been carefully considered by the Select Committee, in whose Report he found it stated as follows :—

"Your Committee have anxiously considered another point, namely, what should be the lowest denomination of Notes which should be issued as a legal tender. The disadvantage of issuing two sorts of Notes, one of which should be a legal tender, and the other not, seemed to be such that it was desirable to make all the Notes uniform in this respect."

From this he understood that it was intended that, whether the Notes were to be not lower than ten Rupees, or than twenty Rupees, they should all be made legal tender. Looking, therefore, at all the circumstances of the case, and referring to what had been so ably stated by the Honorable Member for Bengal, as to the effect of making ten Rupee Notes legal tender wherever the Government might think fit to issue them, he (The Chairman) was opposed to the Motion before the Council, unless the Government consented to make them legal tender only within the Presidency Towns. The Report of the Select Committee went on to say :—

"This being so, your Committee have thought that, on the whole, it would be more prudent not to authorize at present a lower denomination of Notes than for twenty Rupees. With a circulation of five and ten Rupees Notes, it appeared to several Members of your Committee, that there would be considerable risk of exciting suspicion and discontent among the mass of the community, who might be compelled to take payments in an unaccustomed medium, for which they could not readily obtain change without loss. If under the proposed provisions as to Gold, that Metal should come into general circulation, the use of small Notes would be, in a great measure, superseded by a medium, which, from its intrinsic value and power of uniform circulation, must be admitted to possess some important advantages over any form of small Note Currency. If, on the other hand, those apprehensions should be groundless, and after a short time, when the public are familiarized with the larger Notes, a spontaneous demand should arise for Notes of a smaller denomination, it will be easy to introduce a Bill, extending the limit below twenty Rupees."

Now that entirely accorded with his view of the subject. If, after the Bill had been tried, it should be considered necessary to reduce the minimum from twenty to ten Rupees, it would be easy to introduce and pass a Bill for the purpose. Concurring, as he did, with the Report of the Select Committee, it appeared to him that the Bill had far better stand in its present shape.

SIR BARTLE FRERE said that he thought the question was very much altered by the Petitions they had just heard read. These Petitions showed that there was a very strong

objection on the part of the mercantile community here, to give up the convenience they now possessed in Notes of a denomination as low as ten Rupees, and he had little doubt that, when there had been time for an expression of opinion from Madras and Bombay, the same feeling would be found to prevail there.

With regard to the stress which had been laid on the opinion expressed by the Select Committee, he regarded this as a question not of principle, but of degree. The question was whether they should fix ten or twenty Rupees as the limit, and it was open to them to consider whether they should stop at even ten or twenty Rupees, or take a higher or lower denomination. He did not therefore feel precluded, on receipt of the Petitions now before them, from reconsidering the opinion to which he had agreed as a Member of the Select Committee.

In discussing this question, he thought his Honorable friends, the Members for Bengal and the North-West, had laid too much stress on the small proportion which Notes of low denominations bore to those for larger amounts, and had thereby undervalued the convenience of the small Notes to the public. He would instance the case of copper and cowries, which formed the small change of the poorer classes. No doubt, the proportion of total value which all the copper or cowries in circulation bore to the whole currency, was very small, but how great would be the inconvenience, especially to the poorer classes, if such copper or cowries were withdrawn, and ceased to be available in the smaller transactions of commerce.

He would not dwell on the arguments of his Honorable friend, the Member for the North-West, relating to the paper currency of America, France, and other countries, because the character of the currency was essentially different in not being both convertible and a legal tender. It was this latter characteristic which, it seemed to him, was the great safeguard to the poor man. He would take such an instance as that put by the Honorable Member for Bengal, of a poor cultivator, who had agreed for an advance and was forced to take it in a ten Rupee Note. If the Note were a legal tender, the receiver could not be a very serious loser. He could pay his rent or revenue with it, or he could pay any other debt. Unless the Notes were made a legal tender, it would be impossible to ensure their being always taken in payment of Government revenue, and this w , a point of immense importance in a country like this, where so large a portion of the whole circulation passes every year through the Government treasuries which are scattered all over the country.

He would put it to his Honorable friend the Member for Bengal, whether the proposition of the Honorable Member of Government (Mr. Laing) did not meet all his objections? That proposition was that these small Notes should not be issued, save at places to be fixed by Regulations published in the Government Gazette, and no doubt great care would be exercised in extending the issue beyond the Presidency Towns. But they would be receivable every where, in payment of debts, or of Government revenue. Supposing therefore these small Notes got to Rangoon, as supposed by his Honorable friend, they would get there, not by being issued there by Government, but by the ordinary operations of commerce; and if any man received them in the ordinary course of business, he would be able to pay them away in payment of debts or taxes, and it was hardly possible they could long remain at a greater discount than a new coinage of Rupees or any other new form of metallic currency.

For these reasons he would comply with the prayer of the petitioners, and fix the limit at ten Rupees.

MR. LAING said, he wished to say but one word in order to remind the Council of the real point under discussion. From what had fallen from the Honorable Members for Bengal and the North-Western Provinces, he must say he was rather in a difficulty to know where he and they differed. The difference was reduced to this,

whether, during the interval which must elapse before the experiment of a proper Gold Currency could be fairly tried, the Presidency Towns and Districts should be deprived of the ten Rupee Note Circulation which they now possessed. He thought not, and this was the question on which the Council would now divide.

The question being put, the Council divided :—

Ayes 4.	*Noes* 3.
Mr. Erskine.	Mr. Sconce.
Mr. Laing.	Mr. Harington.
Mr. Beadon.	The Chairman.
Sir Bartle Frere.	

So the Motion was carried, and the Section was finally passed with two other verbal amendments.

Section IV was passed after verbal amendments.

Sections V to VII were incorporated into one Section after the necessary and a few other verbal amendments.

Sections VIII to X were passed after verbal amendments.

Section XI provided as follows :—

"The Head Commissioner, the Commissioners, or Agents, and the Deputy Commissioners or Agents shall, in their respective 'Circles of Issue,' on the demand of any person, issue from the Office of Issue of their respective Circles, such Promissory Notes, on the terms following :—

First, in exchange for the amount thereof in Silver Coin of full weight of the Government of India ; or, *secondly*, in exchange for the amount thereof in Standard Silver Bullion or Foreign Silver Coin computed according to such standard at the rate of 979 Rupees per 1,000 tolahs of Standard Silver fit for Coinage ; provided always that the said Head Commissioner, Commissioners, Deputy Commissioners, and Agents shall, in all cases, be entitled to require such Silver Bullion and Foreign Coin, to be melted and assayed at the expense of the person tendering the same, and provided also that in all places where there is no Mint of the Government of India, it shall be optional for any such Head Commissioner, Commissioner, Deputy Commissioner, or Agents, to issue Notes in exchange for Silver or Foreign Coin under this Section ; or, *thirdly*, in exchange for other Notes of the Government of India payable to bearer on demand of other amounts issued within the same Circle. Provided also, that it shall be lawful for the Governor-General in Council, from time to time, to direct, by order to be published in the Gazettes of Calcutta, Madras, and Bombay, that Notes to an extent not exceeding one-fourth of the total amount of issues represented by Coin and Bullion as hereinafter provided, may be issued at such Offices or Agencies of Issue, as may be named in the order, in exchange for Gold Coin of full weight of the Government of India, or for Foreign Gold Coin or Gold Bullion computed at rates to be fixed by such order, and which rates shall not be altered without six months' previous notice."

MR. SCONCE asked, with reference to a remark made by the Honorable gentleman in presenting the Report of the Select Committee, whether it was the intention of Government to receive Gold Coin generally in lieu of Silver, or only to the amount of one-fourth as limited by this Bill ?

MR. LAING said, the Government could not come to any definite resolution in the matter, until they knew the views of the Home Government on the subject. At the same time the Government would do all they could to encourage the receipt of Gold at the treasuries to the extent that they might not be embarrassed.

THE CHAIRMAN asked if the Government had considered, whether inconvenience might not arise if any person should import a large mass of Bullion, demand Notes for them, and return them the same day for Coin. He thought that, in 1857 or 1858, there was so great an influx of Bullion in the Mint that the Officers there could scarcely coin Silver as fast as it was required. The practice now was to issue Mint Certificates payable at 30 days' sight for all Bullion brought for Coinage. It was not his intention to move any amendments on the subject. He only made the suggestion, in order that the Government might consider whether it would be necessary to take measures to provide against the possibility of being ever swamped by a large influx of Bullion.

MR. LAING said that the danger was so remote that the Government were quite willing to undertake the risk.

THE CHAIRMAN then referred to the last proviso in the Section, and suggested that, when the rate at which Gold was to be taken was

fixed for six months, the Commissioners ought to be bound to take it until the rate was altered.

An amendment, in accordance with the last suggestion, was adopted, and the Section was passed after some further amendments.

Section XII provided as follows :—

"The whole amount of the Bullion and Coin so received for Notes, shall be retained and secured as a reserve to pay such Notes, with the exception of such an amount, not exceeding four crores of Rupees, as the Governor-General in Council, with the consent of the Secretary of State for India, may, from time to time, consider as a safe limit, below which the Paper Circulation of India cannot fall, and the amount so fixed, shall be published in the Gazettes of Calcutta, Madras, and Bombay, and shall be invested in Government Securities, and the said Coin, Bullion, and Securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said Notes ; and the said Notes shall be deemed to have been issued on the security of the Coin, Bullion, and Securities so appropriated and set apart, as well as on the general credit of the Government. Provided that any Gold Coin or Bullion which may be received under this Act, may be sold or exchanged for Silver Coin or Bullion, to be so appropriated and set apart, instead of the Gold Coin or Bullion."

Mr. SCONCE said, he had, for facility of reference, caused to be printed for circulation among the Members, a paper containing the following Sections, which he proposed to move in substitution for Section XII :—

"It shall be lawful for the Governor-General of India in Council, with the sanction of the Secretary of State for India, to direct that a certain portion of the Coin and Bullion so received in exchange for Notes, not exceeding at any time one-half of the total sum of the Notes in any Circle issued, and not exceeding in the whole the sum of six crores of Rupees, may be invested in the purchase of Government Securities ; and the whole remaining Coin and Bullion, which shall not be so invested, together with the securities purchased as aforesaid, shall be held by or on behalf of the Head Commissioner in such manner as the Governor-General of India in Council may direct, and shall be exclusively reserved to provide for the satisfaction and discharge of the Notes issued.

If at any time the Head Commissioner or other person by whom the Notes of any Circle are issued or are payable, shall be unable, from the reserve of Coin and Bullion held as aforesaid, to provide for the payment of any Note, of which payment shall be demanded, such Head Commissioner or other person may demand, from any Officer in charge of a Public Treasury, such money as may be necessary to pay the Notes presented for payment, and such Officer shall be bound to pay to the Head Commissioner or other person the money so demanded.

Any order which the Governor-General of India in Council may, from time to time, make under Section XII of this Act, shall recite the date of the sanction given to the same by the Secretary of State for India, and shall be published in the Gazettes of Calcutta, Madras, and Bombay.

Any Gold Coin or Bullion which may be received under the provisions of Section XI of this Act, may, by the direction or with the sanction of the Head Commisioner, be sold or exchanged, from time to time, for Silver Coin or Bullion, and such Silver Coin or Bullion shall be held and reserved as aforesaid, instead of such Gold Coin or Bullion."

He wished to explain the grounds upon which he desired to make the Motion. One change of expression which appeared to him necessary was as to the security the public would be supposed to have on the general credit of the Government. It was now expressed as follows in the Bill :—

"And the said Notes shall be deemed to have been issued on the security of the Coin, Bullion, and Securities so appropriated and set apart, as well as on the general credit of the Government."

Now he did not think that it was enough to say that any man who had Notes, should suppose them to be issued on the credit of the Government. It was, no doubt, intended that out of the cash balances, the Government would pay Notes on demand, but the expression in the Bill as it now stood, hardly met that intention. This was therefore one point provided for by his amendment. It would be seen from the Despatch of the Secretary of State which had been printed and circulated some time ago, that Sir Charles Wood had suggested that the cash balances in the Indian Treasuries should be made available to meet any unforeseen demands in the payment of Notes, so that the Despatch had only suggested very much the same thing that he (Mr. Sconce) now proposed in not very different words. Paragraph 17 of the Despatch stated as follows :—

"It is, however, so indispensable in the first instance to establish confidence in the Notes, and

to satisfy the people of India that they can certainly at any time obtain payment of them in Specie that, beyond the reserves of Coin and Bullion in the hands of the Currency Commissioners, it should be provided that the cash balances in the Indian Treasuries should be available to meet any unforeseen demand for the payment of Notes; and arrangements should also be made for establishing credits on the Collector's Treasuries in favor of the District Currency Commissioners, for any difference between the amount of their issues and the cash balances in their hands. With these safeguards and precautions it seems impossible that a doubt can be entertained by any one of the perfect convertibility of the Note at all times and under all circumstances."

Another matter was as to whether four crores was a sufficient amount to be invested in Government Securities. He had no objection to having four crores, and the Council knew that he was by no means desirous of purchasing an inordinate amount of securities with the deposits of Coin paid in exchange for Notes; but, considering how closely the amount of four crores corresponded with the present excess of Note Circulation of the Banks, that might probably prove small. Referring to this matter, the Secretary of State, in the 18th paragraph of his Despatch, observed as follows:—

"As the Circulation of Notes is extended beyond the immediate neighborhood of Calcutta, (and the advantages to be derived from the system will be very incomplete until this is done), a much larger amount of Notes will be required; and under those circumstances the limit of the fixed amount may be raised. But, as this should only be done after full experience of the working of the system, I think it better that any change should be made either by legislative enactment at the time, or by an order of Government with the sanction of the Secretary of State in Council, to be published in the Gazette, power for doing this being contained in the Act which may be passed on the subject."

Looking then to the Circulation of Notes extending beyond the Presidency Towns, he thought that the limit of the investment in securities might be increased beyond the amount that would correspond with the present Circulation of the Banks. And besides it seemed to him desirable to determine the rule according to which such investment might be made. As the Bill stood, the whole amount of four crores might be at once purchased. But he thought it very objectionable for the Council to sanction this course, so that the Commissioners should go abruptly into the market and purchase so large an amount of the public securities. He thought it would be more fair to the public to make such purchases gradually, and therefore he proposed that the investment in securities should not exceed one-half of the amount of Notes issued.

Even if these views were not adopted, there were various verbal amendments necessary in Section XII. But if the Honorable Member of Government to his right (Mr. Laing) was not disposed to adopt his amendments, it was not his (Mr. Sconce's) intention to press them.

MR. LAING said, he must say he was rather surprised at the tone taken by the Honorable Member for Bengal, who was an advocate for the privileges of the Legislative Council. His (Mr. Laing's) principle was that the limit now considered to be prudent, should not be exceeded without coming to the Legislative Council to pass a fresh law; while the Honorable Member wished to give the Executive Government a discretionary power of extending the limit up to 6 crores, an amount which certainly far exceeded what could, under existing circumstances, be considered as safe. There was a large principle involved in this, namely, that paper money should not be created at pleasure by any Government, but should represent actual coin or bullion beyond a certain safe and fixed limit to be determined by legislation. If the circulation should greatly increase, it would be easy to come to the Legislative Council and propose a law to extend the limit of 4 crores; but at present no one could say that this limit could be exceeded without risk. At the present moment there was an issue of about 3½ millions in Notes at the three Presidencies, against which there was held one-fourth in specie by law, and actually a much larger proportion, so that an issue against securities up to even 4 crores, would greatly exceed the existing pro-

portion of paper issue, and it was only because the general cash balances were also liable that he had ventured to go so high as 4 crores in fixing the limit. But with this limit and the cash balances which seldom contained less than 11 crores liable, he really thought that the Government might be safely trusted to make their own arrangements as to the reserve of cash or bullion to be kept at each place of issue, so as to ensure the payment of their Notes. Nor could he (Mr. Laing) adopt his second Clause, which proposed to render it compulsory on Officers at the Government Treasuries to apply their cash balances in payment of Notes, however urgently they might be required for other purposes. It would be quite enough that the Government were bound to cash the Notes on demand under pain of committing an act of bankruptcy, and it was better to trust to this than to attempt to get an illusory security by passing Clauses which would certainly be set aside if such a crisis really came as obliged the Government to suspend payment. The other Clauses of the Honorable Member appeared unnecessary, the objects being already provided for by the Bill.

MR. SCONCE having then withdrawn his Motion, the Section was passed after some verbal amendments.

Section XIII was passed after verbal amendments.

Section XIV was passed as it stood.

Sections XV and XVI were passed after amendments.

Section XVII was passed as it stood.

Section XVIII was passed after amendments.

Sections XIX to XXI were passed as they stood.

MR. SCONCE asked the Council to go back to Section XVIII. He could not but entertain great apprehension as to the effect of this Section, more especially now that it had been determined to issue Notes for ten Rupees; and though not prepared at this moment with a specific motion on the subject, he desired to reserve to himself the right of proposing an amendment on any future occasion. By this Section, any Note paid into or held in a Mofussil Treasury, to whatever amount, might be paid out by the Government from that Treasury. Any party paying in coin into the central office of issue would, as a matter of course, receive Notes in exchange. The circulation of Notes that would gradually find their way into the interior, first to villages adjoining the city of issue, then to villages beyond those, and again from district to district, he had no desire to restrict. Such a circulation would be regulated by the convenience of the public; but it might happen that a party receiving Notes to a large amount would transmit them to a remote district, such as Rungpore or Purneah, for the purpose of being paid into the public Treasury as revenue. Or, again, to suit its own convenience, Government, by paying coin into an office of issue, might send Notes to any District Treasury. Thus Section XVIII, which made these Notes legal tender, would authorize Government to make all their payments in Notes, and the public Treasury would be in the position of forcing out supplies of paper beyond the convenience of the local community. What were the ordinary payments made in Treasuries? Salaries, pensions, advances to Commissariat Officers or Executive Engineers, and, in some Districts, advances for the manufacture of Salt and Opium. He would declare, as was done as respects the Branches of the Bank of England, that at all Government Treasuries, in payment of money due by Government, Notes should not be a legal tender. It seemed to him that the compulsory issue of Notes in the interior of a District by Collectors ought not to be permitted. No Honorable Member would venture to say that Government should be enabled by law to pay their pensioners, some of whom were cripples, by Notes. It would be wrong, cruel, and heartless to do so, and he would withhold the power. He had already stated his objections so fully, that he would not detain the Council any longer.

Mr. LAING said that, as the Honorable Member did not propose to move any amendment at present, he would only say one or two words with reference to his objection. He (Mr. Laing) thought that the Honorable Member's argument, if carried out to its logical conclusion, would go to show that there could be no currency at all. His objection would apply equally to any system of Paper Currency, or any system of Gold Currency, for with either the poor man would be occasionally put to inconvenience in getting change. If that argument were to be conclusive, the only currency ought to be of copper or even of cowries. But the question was one of the balance of convenience, which in all civilized countries had led to the adoption of gold or paper to represent the higher values. A line must be drawn somewhere or other, but as the Honorable Member did not propose to go into the consideration of the matter at present, he (Mr. Laing) would reserve any further remarks he had to make on the subject.

Mr. HARINGTON suggested that, if the Honorable Member for Bengal considered that the Section to which they had gone back should be amended, it would be better that the amendment should be brought forward and discussed at once, or if the Honorable Member wished further time for consideration he might ask the Committee to allow him to postpone any Motion that he might desire to make until the next Meeting of the Council. It was intended he believed that the Bill should go to England prior to being read a third time, and before its return to this country, the Council would probably lose the services of the Honorable Member for Bengal.

The CHAIRMAN said, if the Bill was to go home, it should be sent in a shape in which this Council were prepared to pass it. Otherwise, the Bill would require to be sent home again. He, therefore, entirely agreed with the Honorable Member for the North-Western Provinces, that whatever discussion was to take place on the subject, should now take place in the Committee of the whole Council.

Mr. LAING said, he would put it to the Honorable Member for Bengal, if his object had not been sufficiently attained by the very full discussion which had already taken place and which resulted in a division of 3 against 4 Members.

Mr. SCONCE said, he thought we had not yet had a discussion on the subject of the payment of the Notes in the Mofussil Treasuries. The question as to legal tender had been only referred to, but substantially the discussion that arose on Section III was as to the value of the Notes. If the Council had no objection, he would propose that the consideration of this Bill be adjourned till this day week, and that the Bill, as it had now been amended, be reprinted for circulation among the Members.

Mr. LAING said, the question as to legal tender was the real point about which we had been at issue. At any rate, he thought it far better if the matter were brought forward now and decided.

The CHAIRMAN said, he entirely agreed with the Honorable Member (Mr. Laing.) He did not think that the amendments which had been made in the Bill were material in principle. If the Honorable Member for Bengal wished to re-consider the subject on other grounds, he would be quite at liberty to do so hereafter. But it appeared to him (the Chairman) that it would be much better to finish the consideration of the Bill to-day, as we were all prepared to decide upon the question, whether these Notes should be made legal tender or not.

Mr. SCONCE said, he would defer to the opinion of the Council, and would not make a Motion.

Sections XXII and XXIII (which provided a penalty for making or having in possession paper of certain description) were omitted as being already fully provided for in the Penal Code.

MR. LAING moved the addition of the following Section to the Bill :—

"The words 'British India' in this Act shall denote the Territories that are or may be vested in Her Majesty by the Statute 21 and 22 Vic., c. 106, entitled 'An Act for the better Government of India,' except the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

The Preamble and Title were severally passed as they stood; and the Council having resumed its sitting, the Bill was reported.

WRECKED BOATS.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "for the preservation of property recovered from Wrecked Boats"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

MR. BEADON said, that on the Debate on the second reading of this Bill, he had stated briefly the objections he felt to it, and had recommended his Honorable friend, the Member for Bengal, to withdraw it and prepare another Bill in accordance with what appeared to be the general view of the Council. His Honorable friend opposite (Sir Bartle Frere) had, at the same time, objected to the Bill on account of the complicated nature of its provisions, and because it created a special machinery to do that which properly devolved on the Magistrate. Objection was also taken by the Honorable and learned Vice-President to the provisions of Section V of the Bill, as well as to those of the 2nd Section, empowering the receiver to take people from their work, and keep them employed for an indefinite time in recovering a wreck. He (Mr. Beadon) had pointed out that the appointment of receivers all over the country, to be remunerated by fees and salvage, and empowered to appoint their own deputies, would be likely to give rise to great abuses. And on the whole, he believed that the Bill passed its second reading, on the understanding that it would be altered in Committee, so as to meet the objections that were urged against it.

But what was the case? The only alteration made in the Bill to meet these objections was the omission of Section V. In all other material respects, the Bill stood precisely as it was when read the second time, and as it appeared to him that in its present shape it could not be satisfactorily amended in a Committee of the whole Council, he felt that the only course he could take was again to recommend his Honorable friend to withdraw the Bill, and, if he objected, to oppose the Motion for going into Committee.

The Bill had evidently not received from the public or from the local Governments, the consideration which its importance demanded, and its scope seemed to have been in some quarters misunderstood. The Select Committee had received no reports or communications, except from Madras and Bombay; none from Bengal, none from Pegu, none from Punjab, or any of the other interior non-maritime Provinces, though they would all be affected by the Bill. It was true that since the Select Committee had made their report, the Lieutenant-Governor of the North-Western Provinces had expressed an opinion favorable to the passing of the Bill, though he admitted it was not much wanted, and some of the subordinate officers whom he consulted, objected to it.

The Madras Government did not seem to have consulted any of its officers in the interior, and had submitted only a letter from the Superintendent of Marine, whose observations are directed entirely to the operation of the Bill on wrecks at Sea, and who submitted a set of rules which, whether they have the force of law or not, appeared to him (Mr. Beadon) better adapted for the disposal of wrecked property than some of the provisions of the Bill. In like manner the Bombay Government had referred only to the Commander-in-Chief of the Indian Navy and the Commissioner of Customs for their opinion

on the Bill, showing that they regarded it as applicable only to maritime wrecks. Indeed, the Government stated that the Bill would be of no use in Bombay for the protection of the wrecks of river boats, except in Sind, but the Commissioner of Sind did not seem to have been consulted, and the case of the rivers on the western coast, which are all embraced in the Bill, seemed to have been overlooked.

As to the details of the Bill, he remarked that though its provisions were taken for the most part from the English Merchant Shipping Act, they differed from that Act in some important particulars, and not always for the better. Thus, in England it is only an Officer of Customs or Inland Revenue who can be appointed a receiver of wreck, unless it be convenient that some other person should be appointed, and then only by the Board of Trade. But under the Bill every Magistrate might appoint whom he likes to be a receiver, and as many as he pleases. Again the Bill empowered the receiver in case of wreck to require all persons present, and others whom he might summon, to assist in preserving the boat, the cargo, and the lives of the crew, whereas in England, the receiver could only claim the assistance of those who were present. Then the receiver under the Bill might appoint any person to be his deputy with authority equal to his own. In England, however, it was only Revenue Officers, Justices of the Peace, or Commissioned Officers, who could act in the absence of the receiver. Then again, under the 11th Section, the Magistrate was authorized to award salvage to the extent of one-fourth of the value of the recovered property. But this limit might be a great deal too high in some cases for the exercise of the judgment of a single Magistrate, and in other cases, it might be much too low to afford adequate remuneration. The clause in this Section which empowered the Sessions Judge to award higher salvage, had been struck out by the Select Committee, and he doubted if this were an improvement. In England all cases of salvage up to £200 must be decided by two Magistrates aided by a Marine Assessor, and cases above that value must go before a Court of Admiralty for decision. In England, again, all fees and salvage paid to receivers were carried to the credit of a general fund, but under the Bill they were to be kept as remuneration by the receivers themselves.

The Honorable Member for Bengal, when he brought in the Bill, had stated that it was founded on the representation of most of the officers in Bengal, whose Districts border on the great rivers, but no reason whatever had been shown for extending it to small nullahs, and other inland waters which its terms comprehend, and he (Mr. Beadon) thought it would be much better if the operation of the Bill, modified in some respects, were confined to the sea and tidal waters, and if in respect to wrecks in inland rivers, another and a much simpler Bill were prepared, empowering Magistrates to take charge of wrecks, and award a moderate salvage under such rules as might be thought proper.

Perhaps he owed an apology to the Council for having signed the Report of the Select Committee when he could not support the Bill; but the Report contained only a statement of what the Committee had done, and the Bill itself he had not signed.

Mr. SCONCE said, he would take no objection to the opposition which his Honorable friend had made to this Bill, after having signed the Report of the Select Committee upon it. We had already had to-day a somewhat remarkable instance that Select Committees were not bound by their Reports, and, following that precedent, it was quite open to his Honorable friend to adopt the course he had taken. He (Mr. Sconce) hoped that the Council did not suppose that he had any intention of asserting that the Bill should be passed word for word as it now stood, and not otherwise. He thought that it was a safe and a sufficient Bill, but it was quite competent to any Honorable Member to propose any amendment he pleased. Before going more at large, as he wished to do, into the objections stated to the Council, and

without attaching much importance to the circumstance of this Bill being his own bantling, he did not think that the objections taken by the Honorable Member of Council to his right (Mr. Beadon) were such as to prevent the Council from going into Committee on the Bill.

One objection was that the local Governments had not adequately considered this Bill. Now the local Governments had had the usual opportunity of considering the Bill, and he could not but think that, if the local Governments had not submitted any more objections to the Bill than they had, we might fairly conclude that they were willing to take the Bill as it stood.

Another matter noticed was, that the Bill was complicated, and that it applied to small rivers as well as to great ones. He would state generally the most important principle which he had attempted by this Bill to bring within the legal practice of the Legislature. It was that, when a boat was stranded, and the property of the owner was imperilled, the law declared that other persons should not appropriate the property in that boat at their discretion. Whether the river was large or small, it seemed to him to be equally necessary to make the abstraction punishable, so as to secure protection to the public. A child might drown in a small bucket as in a large tank. No one would say that, because a river was large, protection was to be afforded, and because a river was small, protection was to be denied.

Another objection was that the Magistrates would have a general power to select indiscriminately the classes from whom receivers should be nominated. Now he believed he could not inaccurately conceive the opinion of the Council, that the appointment of receivers might safely be left to the discretion of the Magistrates. Certainly, it was no defect of this Bill, that it did not go farther and attempt unwisely to determine the class of persons from whom receivers should be appointed.

Another matter which was made a strong point of by the Honorable Member was as to the duties of receivers. The Honorable Member said that the power to summon persons to assist was not given to receivers by the English Act. If the Council would turn to the 442nd Section of the Merchant Shipping Act of 1854, it would be seen that he had done no more in this Bill than adopt the English Act. That Section provided as follows :—

"The receiver may, with a view to such preservation as aforesaid of the ships or boats, persons, cargo, and apparel, do the following things, (that is to say)

Summon such number of men as he thinks necessary to assist him.

Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power.

Demand the use of any waggon, cart, or horse that may be near at hand.

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall, for every such refusal, incur a penalty not exceeding one hundred pounds."

Another objection was taken as to the amount of salvage. The Honorable gentleman had said that the Bill, as amended by the Select Committee in this respect, was no improvement. He (Mr. Sconce) would only say that, in endeavoring to meet the views of the Select Committee, he had consented to the omission of the latter part of the Section, which provided that, in cases where one-fourth salvage should appear inadequate, the Magistrate might refer the case to the Sessions Judge. The majority of the Select Committee was in favor of omitting that portion of the Section, but he was free to say for himself that he rather agreed with the Honorable gentleman, that the Section was more complete as originally drawn. He understood his Honorable friend to object to going into Committee upon the Bill, because it was not simple enough, and it was recommended to us that we should leave the question of salvage and other matters of importance to the discretion of the Magistrate. He believed that the Council

would not consent to adopt this non-regulation system of legislation.

He did not see that there was any other point in what had fallen from his Honorable friend, which called for any remark.

THE VICE-PRESIDENT said that, if he thought that by going into Committee there was a chance of the Bill being put into a shape which would meet the objections which he entertained to the Bill, he should certainly vote in favor of the Motion before the Council. But it appeared to him that the Bill was so drawn that we could hardly put it into shape in Committee.

The Honorable Member, when he brought in the Bill, said that the object contemplated by it was to regulate the mode in which property was to be recovered from wrecks, and the manner in which assistance was to be rendered to boats in distress. Now it appeared to him that this Bill was not confined to that class of cases. The Honorable Member had also said that the Bill was prepared from the Merchant Shipping Act of 1854. But it seemed to him (the Vice-President) that the Bill was hardly framed according to that Act, and it would be extremely difficult for us to deal with it in Committee without altering it altogether. Section I of the Bill authorized the Local Government to appoint or require the Magistrate of any District to appoint one or more receivers of wreck in such District, and so far he (the Vice-President) saw no objection. But the next Section authorized the receiver, when any boat was in distress, or stranded, or *sunk*, to summon any persons he pleased to assist him in the wreck. He (the Vice-President) did not know if there was anything in the English Act to compel persons to raise sunken vessels. Then again, with respect to the appointment of receivers, the Bill did not provide from what class of persons these officers were to be appointed. But the Bill provided that if the receiver, whoever he might be, could not, without inconvenience to himself, go to assist in the wreck, he might appoint a deputy. The words in the Bill were—

"The receiver, if unable to act as herein provided, may, by an order in writing, depute any other person to exercise the authority by this Act in him vested."

Now, the English Act was very cautious in this respect. It required the Board of Trade, with the consent of the Commissioners of Her Majesty's Treasury, to appoint any officer of Customs, or of the Coast Guard, or any officer of Inland Revenue, or, when it appeared to the Board to be more convenient, any other person, to be a receiver of wreck in any district. It then provided that, during the absence of the receiver from the place where any accident occurred, or in places where no receiver had been appointed under that Act,

"the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of Customs or of the Coast Guard, or officer of Inland Revenue, and also any Sheriff, Justice of the Peace, Commissioned Officer on full pay in the Naval Service of Her Majesty, or Commissioned Officer on full pay in the Military Service of Her Majesty, may do all matters and things hereby authorized to be done by the receiver, with this exception that, with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver and shall place the same in the custody of the receiver."

It did not give the receiver appointed by the Board of Trade power to appoint a deputy, but this Bill did so. Then the Bill provided that—

"Unless the person in charge of the boat shall decline his assistance, he shall require all persons present, and others whom he may summon, to assist in preserving the boat, the lives of the crew, and the cargo, and any articles belonging to the boat."

So that, if the receiver did not go himself, but sent a deputy, the deputy was to have the power of summoning whomever he pleased to assist in the wreck. Considering the class of persons from whom the receiver would be appointed, he (the Vice-President)

did not think that either the receiver or his deputy ought to be entrusted with such a power. It was to be borne in mind that the receiver was to be remunerated not only by a portion of the salvage payable on account of recovered property, but also by fees or salary payable out of a fund to be created by the proceeds of wrecked property which went to Government in consequence of its being unclaimed. That of course gave him an interest in the fund, and might induce him to summon parties at a distance who would be liable to a penalty if they refused to assist in the wreck, though there was no provision as to whether these parties, if they should assist in recovering the wreck, were to be at all remunerated for their trouble. Then if we came in Committee to consider the class of persons from whom receivers ought to be appointed, or the persons who ought to be appointed during the absence of the receiver, and the order of succession in which they were to be appointed, as was provided in the English Act, he was not furnished with the necessary information.

Then Section V provided as follows :—

"All recovered wreck or the value thereof, if sold, excepting such portion of such wreck or value as may be awarded as salvage under Section XI of this Act, shall be held on behalf of the owner, or if not claimed by the owner within one year from the recovery of the same, shall be at the disposal of the Government."

So that if the property were not claimed within one year, it became the property of Government, and the receiver had a lien upon it. It would be his interest, therefore, not to let the owner know about the property, as his object would be to secure his salary, and for that purpose to make as large a fund as he could. No provision was made in the Bill as to the mode of giving notice to the owner to enable him to know how his property might be recovered. Now all that was provided for in the English Act.

Then there was another important principle involved in the matter. Section VII provided as follows :—

"Upon the receipt of credible information, that any property recovered as aforesaid is secreted or in the possession of some person who is not the owner thereof, or is otherwise improperly dealt with, the Magistrate or the Head Officer of a Police Station in whose jurisdiction such person is found may grant a warrant to search for any such property, and to seize and detain the same for the purpose of being disposed of as provided in this Act."

Why should not that be left to the ordinary law? And why should not the Magistrate be allowed to grant a search warrant in the usual way, that is, upon information given to him upon oath, instead of acting upon the receipt of credible information? He (the Vice-President) thought that that was a very dangerous power to be given to the Head Officer of a Police Station. Section VIII then provided as follows :—

"Any person who *wrongfully* removes from any boat that may be in distress, stranded, or sunk, any part thereof, any part of the cargo or other articles belonging thereto, and any person who knowingly secretes any articles removed as aforesaid, shall, in addition to any punishment to which he may be subject for any offence committed by him, be liable to pay double the value thereof, and to a penalty not exceeding two hundred Rupees."

It would be necessary to define what was wrongful, and that would be a matter for consideration in Committee. Having done that, we should come to Section X, which provided as follows :—

"When any boat, cargo, or article as aforesaid shall be plundered, damaged, or destroyed by any persons riotously and tumultuously assembled, full compensation may be awarded to the owner of the property, to be paid by the inhabitants of the village or place in which the offenders reside, in such shares and in such manner as the Magistrate may direct. In any case in which the sum so awarded amounts to two hundred Rupees, an appeal shall lie to the Sessions Judge."

It appeared to him to be very hard to the inhabitants of the place where the offenders resided to make them answerable for an offence which might have been committed 100 miles off,

as they might be for instance in the case of Captain Bird referred to by the Honorable Member for Bengal in introducing the Bill.

Then we should come to Section XI, which provided as follows :—

"Salvage of recovered wreck may be awarded by the Magistrate in an amount not exceeding one-fourth of the value of the property recovered."

This Bill prescribed no limit whatever as to the amount of salvage cognizable by a Magistrate. According to the English Act, however, if the amount exceeded £200, the Magistrate could not interfere, and the matter would have to be dealt with only by a Court having Admiralty Jurisdiction. Then was the Bill to be applicable to steam-boats or flats which might be sunk up the river ? If so, it might extend to the salvage of two or three lakhs of Rupees, as there had been a case, which was tried only the other day, of a steamer which was wrecked containing Indigo of the value of about two or three lakhs of Rupees. The attention of the Select Committee was called to this point by a communication from the Bombay Government, recommending that the Bill ought to include large boats navigating the seas as well as the small crafts navigating rivers. With reference to this communication, the Select Committee observed in their Report, that "we apprehend that there is nothing in the provisions of the Bill to confine its operations to the smaller class of boats which navigate rivers ;" so that the Bill would apply to steamers. Having determined that point, we should have to decide whether there should be no appeal. There could be no question that we must allow an appeal in cases involving large sums of money, and there should be some provision similar to that contained in the English Act, which required cases of salvage above £200 to be decided by the Admiralty Court. There being no Admiralty or Vice-Admiralty Court in the Mofussil, we should have to decide what Court should take cognizance of such cases. Were we prepared to discuss that point in Committee, and was it not more properly a matter to be specially considered and reported on by the Select Committee and the framer of the Bill ?

Then there was another important Section, which, after authorizing Magistrates to adjudge penalties and forfeitures, provided as follows :—

"All penalties imposed by such Magistrate or other Officer may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender found within the jurisdiction of such Magistrate or other Officer, by warrant under the hand of such Magistrate or other Officer."

Under this Section, therefore, the Magistrate was empowered, in default of payment, to send a man to jail, and the poor unfortunate man was liable to remain in jail until he paid the fine.

These were only some of the objections which he entertained to the Bill. If the Honorable Member in charge of the Bill was prepared with any amendments to meet them, he (the Vice-President) had no objection to go into Committee. The Honorable Member, when he brought in the Bill, had read the following extract of a letter from the Government of Bengal, which was dated the 28th May 1853, Lord Dalhousie being the then Governor :—

"In July of last year, a boat, in which Captain Bird of the 11th Native Infantry, and his family, were proceeding to Chittagong, was run aground on the coast, (there is every reason to believe intentionally), and before the boat became a wreck, three hundred or four hundred people from the neighbouring villages collected, and, together with the crew, broke open Captain Bird's boxes, and plundered the whole of his property, worth about three thousand Rupees.

* * * * * * *

"The Governor of Bengal is disposed to think that the provisions of the existing law, the construction of which is shown above to be open to doubt, are insufficient for the prevention of the heinous crime of wrecking and plundering boats, which has long been known to prevail along the great rivers of Bengal, and on the north-eastern shore of the Bay. His Lordship would take the offence out of the category of those punishable by a Magistrate, and include it specifically among those which are now declared by law to amount to gang rob-

bery. At the same time, His Lordship would render it incumbent on all owners and managers of land to give information of wrecks happening in their estates, and give authority to the local Government to raise a special police in places where the crime is found to prevail, charging the expense on the inhabitants. Lastly, His Lordship would empower the Magistrate to award salvage in cases of wreck or danger to the extent of a moderate proportion of the value of the boat and cargo."

It appeared to him (the Vice-President) that the Penal Code would meet all such cases as that above referred to.

For these reasons he thought it would be better to withdraw this Bill altogether and to introduce a new one.

MR. HARINGTON said, he had some hesitation in addressing the Council after what had fallen from the Chair, particularly at this late hour; but he must remark that it certainly did appear to him that the course which they had been asked to pursue in respect to this Bill, was a most unusual one. He would not say that it would be a very uncourteous course towards his Honorable friend, the Member for Bengal, who had introduced the Bill and had bestowed much labor upon it; but he believed he might say that it was altogether without precedent. He had had some experience in the proceedings of this Council, and he recollected no instance of the Council, after allowing a Bill to be read a second time, refusing to go into Committee upon it. He would refer the Council to what took place in the case of the Bill brought in by the late Honorable Member for Bengal (Mr. Currie), to regulate proceedings in lunacy in the Courts of Judicature established by Royal Charter. When the Council went into Committee upon that Bill, objections were taken which affected the whole character of the Bill; but the Council did not refuse to go on with the Bill on that account. On that occasion it was pointed out by the late Honorable and learned Chief Justice that it was open to the Council, on the motion for the second reading of the Bill, to have thrown it out, but they had not done so; on the contrary, they had allowed the Bill to be read a second time, thereby affirming the principle of the Bill, and had referred it to a Select Committee. This was what had been done in respect of the Bill now before the Council. No doubt several Honorable Members had spoken against the Bill, but he believed he was right in saying that no Honorable Member had voted against the second reading. The result of the discussion on the Bill to which he had just been alluding was that it was referred back to the Select Committee with certain instructions, the Honorable and learned Vice-President, who had taken the objections to the Bill, being added to the Committee. It was open to them to pursue the same course in respect to the Bill now before the Council, and he ventured to suggest that they should adopt that course rather than stop the Bill at the stage at which it had now arrived, which would be the result if they refused to go into Committee upon the Bill. If the Council had not confidence in the former Select Committee, a new Committee might be formed, or other Members might be added to the former Committee. Honorable Members might, of course, move any amendments they thought proper while the Bill was passing through Committee, and if they did not succeed in carrying their amendments, they might vote against the third reading. The Honorable Member of Council opposite (Mr. Beadon) seemed to think that two or three simple Sections were all that were required. He submitted that it would not entail much labor upon the Honorable Member to frame the few Sections which he thought might, with advantage, be substituted for the present Sections of the Bill; and if the Council agreed in adopting the Sections proposed by the Honorable Member, the Bill would pass into law, and they would avoid the loss of time which would be the consequence of their refusing to go into Committee upon the Bill. He did not understand either the Honorable Member of Council opposite (Mr. Beadon), or the Honorable and learned Vice-President to object to the present Bill on the ground that no Bill was necessary. So far from

The Vice-President

this being the case, the necessity of some Bill seemed to be generally admitted. The Bill before the Council had been introduced at the request of the Bengal Government, and in the absence of any statement to the contrary, they might assume that the provisions of the Bill were concurred in by that Government. The Governments of Madras and Bombay had not objected to the Bill, though both Governments had proposed certain alterations in it, and the Honorable the Lieutenant-Governor of the North-Western Provinces was favorable to the passing of the Bill, though it was admitted there might not be the same necessity for the Bill in those Provinces which there was in Bengal. He might add that the early departure from the country of the Honorable Member for Bengal would prevent his carrying any new Bill through the Council. For these reasons, he could not consent to stop the Bill at the present stage, and he should vote for going into Committee upon it.

MR. SCONCE, after noticing briefly some of the objections taken by the Honorable and learned Vice-President, said he hardly knew how the Council in general would be disposed to adopt the suggestion of the Honorable Member for the North Western Provinces. But if the Council thought it necessary, he (Mr. Sconce) had no objection to the Bill being referred back to the Select Committee for the purpose of being further amended.

THE VICE-PRESIDENT said, it was certainly not his intention to throw any difficulty in the way of the Honorable Member for Bengal. On the contrary, he was quite willing to assist the Honorable Member in putting the Bill into a shape that would meet the objections which he (the Vice-President) entertained to it as it now stood, if he thought that such a thing was practicable at this late hour of the evening.

He should be very sorry indeed to offer any discourtesy to the Honorable Member. He had no wish whatever to oppose the Motion for going into Committee, though, in assenting to that Motion, he did not desire to be bound to the third reading of the Bill unless it was amended, as he thought it ought to be, before it was passed by the Council.

MR. BEADON said that nothing was farther from his intention than to offer any discourtesy to the Honorable Member for Bengal. But he really did think that the best course for the Honorable Member to take would be to withdraw the present Bill, and to bring in another framed so as to avoid the objections stated by the Honorable and learned Vice-President.

MR. HARINGTON said, the adoption of the course suggested by the Honorable Member of Council (Mr. Beadon) would involve the necessity of a republication of the Bill, considerable loss of time, and above all, the loss of the assistance of the Honorable Member for Bengal of whose services the Council were shortly to be deprived.

The Motion for going into Committee was then put and carried; and after some further discussion, the consideration of the Bill was postponed, on the Motion of Mr. Sconce, and the Bill was referred back to the Select Committee for the purpose of being amended in accordance with the suggestions of the Honorable and learned Vice-President.

POLICE.

SIR BARTLE FRERE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "for the Regulation of Police within any part of the British Territories in India to which it may please the Governor-General in Council to extend its provisions."

PETITION OF KHOSHAL MUNDUL AND OTHERS.

THE VICE-PRESIDENT moved that the Report of the Standing Orders Committee on the Petition of the Indigo Planters' Association, relative to the Petition of Khoshal Mundul and others, be adopted.

SIR BARTLE FRERE said that, as no change in the Standing Orders was proposed by the Report, he had no objection to offer to its reception, but it contained some passages which seemed to him such as should not pass without explanation or remark.

The Report implied that in the case reported on there had been a mistake, not only in the publication and sale of a Petition containing libellous reflections on individuals, but also in its being printed and circulated to Members of that Council. As far as the publication and sale of a libellous Petition was concerned, he fully agreed with the Report; but he was not prepared to place in the hands of any Officer of the Legislative Council, or even of a Select Committee of the Council, the power to strike out all passages which might be considered legally libellous, and to print and circulate to the Members only so much of the Petition as contained nothing which could be construed into a libel. He did not wish the Legislative Council to claim or exercise any privilege above the law. But a statement which was in strict legal phrase a libel, might often have most important bearing on their legislative action, and relate to facts which they ought all to know; and it did not seem to him that the printing of such papers for their own use, as long as they were not published by distribution to others or sold, could by any possibility be objectionable. The libel was published by being put into a Petition and presented to the Council in a form accessible to all Members who chose to read it. And as long as the Council gave it no additional publicity, by distributing or selling the libel to others, the mere printing for the use of Members was an essential convenience and necessary to the discharge of their duties, and could not be reasonably objected to, while the omission of passages which, though strictly libellous, might be most important, might leave Members ignorant of the essential part of the Petition.

THE VICE-PRESIDENT said, he thought that the course which had now been recommended by the Standing Orders Committee was the course which had been adopted on previous occasions. When a Petition was presented to the Council by the Clerk, any Member might move that it should be printed. By a subsequent Standing Order, if the Clerk of the Court, before carrying out the order, found that the Petition contained any libellous or other matter that ought not to be printed, he was required to call the attention of the Standing Orders Committee to it, and the instruction would be for the libellous portion to be expunged, and the rest to be printed and circulated. If any Honorable Member was desirous of seeing the portion which had been omitted, he had only to apply to the Clerk of the Council to see the original Petition which would be deposited among the records of the Council. Now the Petitioners in this case, while complaining of the former Petition having contained reflections upon the character of a gentleman, had fallen into the very error they complained of, because their Petition contained reflections on the character of certain Officers of Government who were alleged, by means of incorrect reports, to have influenced the Government to pass orders injurious to the interests of the Planters. That was a very serious charge. As soon as we found that the Petition of Khoshal Mundul contained reflections upon the character of individuals, we did all in our power to retrace our steps. It was too late then to retrace our steps with regard to the Printing of the Petition, but we immediately went and stopped the sale of it, and got back every copy, with the exception of two copies which had been sent to the Secretary of the Indigo Planters' Association who had applied for them, and with the exception of those copies which, according to the Standing Orders of the Council, had been circulated among the Members of this Council and certain Government Offices. He had omitted on the former occasion to state that a copy of the Petition had been sent to the Librarian of the Calcutta Public Library, together with other papers which were supplied to the Library

free of charge. His attention had not been called to the circumstance at the time, nor was the learned Clerk of the Council aware that a copy had been sent to the Library until afterwards, when the Librarian was written to on the subject, and he very properly immediately returned that Petition. As the present Petition, however, had repeated the error of which it complained, the Standing Orders Committee had recommended that it should be dealt with in the same way as the former, namely, that it should be circulated only among the Members of the Council and the Offices of Government to which the other was sent, with the omission of the passage which reflected on the Officers of Government.

The Motion was then put and carried.

PRISON AT THE NEILGHERRIES.

SIR BARNES PEACOCK said, he had been requested by the Honorable and learned Judge (Sir Charles Jackson), who had been prevented by domestic affliction from attending the Council to-day, to postpone the question, which stood in the Orders of the Day, enquiring what progress had been made in erecting a Prison at the Neilgherries, and what accommodation such prison would afford for European and American Convicts sentenced to Penal Servitude.

The Council adjourned.

Saturday, March 9, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq., and
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.
H. B. Harington, Esq.,	

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from the Indigo Planters Association, concerning the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

MR. BEADON moved that the Petition be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL).

THE CLERK presented a Petition from zemindars and landholders in Zillah Nuddea, praying for a modification of Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).

MR. SCONCE moved that the Petition be printed.

Agreed to.

DIVORCE.

THE CLERK presented a Petition from Lallchund Mookerjee, praying for the passing of a Divorce Act for Native Christians.

MUNICIPAL ASSESSMENT (MOULMEIN, &c.)

THE CLERK presented two Petitions from the inhabitants of Moulmein, concerning the Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners and for levying rates and taxes in the said Towns."

MR. SCONCE (in the absence of Mr. Forbes) moved that the Petitions be printed and referred to the Select Committee on the Bill.

Agreed to.

MERCHANT SEAMEN.

THE CLERK reported to the Council a communication received from the Bombay Government, relative to the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)."

MR. ERSKINE moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

SMALL CAUSE COURTS.

MR. BEADON postponed the Motion (which stood in the Orders of the Day) for the second reading of the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)".

POLICE.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "for the regulation of Police within any part of the British Territories in India to which it may please the Governor-General in Council to extend its provisions;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after verbal amendments in Sections I and XX, and, the Council having resumed its sitting, was reported.

MUNICIPAL ASSESSMENT (BOMBAY).

SIR CHARLES JACKSON moved that the Council resolve itself into a Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a verbal amendment in Section V, and with the insertion in Section VII of words fixing the 15th April 1861 as the date of the commencement of the Act; and the Council having resumed its sitting, the Bill was reported.

PRISON AT THE NEILGHERRIES.

The Order of the Day being read for Sir Charles Jackson to enquire what progress has been made in erecting a Prison at the Neilgherries, and what accommodation such Prison will afford for European and American Convicts sentenced to Penal Servitude—

SIR CHARLES JACKSON said that, before putting this question, he wished to say a few words in explanation. In August 1855, the Legislative Council passed an Act, substituting Penal Servitude for Transportation in the case of European and American Convicts. That Act was passed on the distinct understanding that a Jail would be erected in one of the Hill Stations of India. Indeed, that Act would not have been assented to at all by the learned Judges then on the Bench, without that understanding. In 1859, hearing that no progress had been made in the erection of this Jail, he ventured to ask the Executive Government what steps had been taken in the matter. He had given notice of his intention to ask the question on one Saturday, and he asked it on the following Saturday, when he was answered by the Honorable and learned Vice-President, who was then the Fourth Ordinary Member of the Supreme Council. The Honorable and learned Vice-President brought down papers and gave a full explanation of what was proposed to be done. He stated that a Jail was in course of erection at Ootacamund, partly as a Prison for Europeans sentenced to Penal Servitude, until a larger Prison could be constructed in Jackatolla solely for the use of Europeans. On that occasion, he (Sir Charles Jackson) remembered that the Honorable and learned gentleman thanked him for having put the question, and said that he hoped it would expedite the business. In April of last year, he (Sir Charles Jackson) was at Ootacamund, and the first thing he did was to go and look at this Jail. He found that the building had been proceeded with to as high as his hands could reach. But the cause of the delay was quite

apparent, for part of the top of a hill had been selected, and after removal of a little earth, it was discovered that the hill was a solid rock, and it was consequently necessary to blast away this rock to form a platform on which to build the Jail; and in fact, when he saw it, the further erection of the building was suspended because it was feared that the blasting would injure the walls. He must say that the Jail was an excellently contrived one. It consisted of two stories, each of which contained eighteen cells, nine on each side of a corridor, each cell being intended for the accommodation of only one man. It appeared to him (Sir Charles Jackson) that the accommodation was certainly too small, and he immediately pointed out to the very able gentleman who was superintending the erection of the Jail, that the accommodation would not be sufficient for Calcutta alone; and he now found he was correct, for he (Sir Charles Jackson) had obtained a return from the Jailor, showing that there were now thirty-three European Convicts in Jail. He (Sir Charles Jackson) was then informed that, in addition to these cells, there was a room over the entrance, originally intended, he believed, for the accommodation of the Jailor or for some other purpose, that would hold three or four more Convicts, providing accommodation for only forty Convicts altogether. Still that would not be sufficient for the number of Convicts from Calcutta, Madras, and Bombay. He (Sir Charles Jackson) then enquired about the Jackatolla Jail, and was told that Sir Charles Trevelyan had stopped the further progress of that building.

Under these circumstances, he (Sir Charles Jackson) thought it his duty to call the attention of the Executive Government to the matter as forcibly as he could. It was now clear that the Ootacamund Jail would not be sufficient for the accommodation of all the European and American Convicts, and that consequently the present objectionable system of making Europeans serve out long periods of imprisonment in Jails in the Plains would have to be continued. He thought it was a matter which deserved the serious consideration of the Government. He thought the imprisonment of Europeans and Americans to long periods of Penal Servitude in Jails in the Plains of India was nothing more or less than sentencing them to a lingering torture. The passing of such sentences was also a matter of the greatest embarrassment to a Judge, who knew, in fact, what such sentences of Penal Servitude amounted to. He thought that, if Government was prepared to say that they would provide accommodation for European and American Convicts sentenced to Penal Servitude by proceeding with the erection of the Jail at Jackatolla, that would be sufficient. But if they were to say that, in the present state of the finances, they were not prepared to do this, he thought that it was a matter for the grave consideration of this Council whether the Penal Servitude Act should not be repealed, and some other punishment substituted for it.

Mr. BEADON said that, so far as the question of the Honorable and learned Judge was intended to remind the Government of the necessity of providing for the accommodation of European and American Convicts sentenced to Penal Servitude, he could only say, as a Member of the Government, that he was much obliged to the Honorable and learned Judge for having called his attention to the subject He had no doubt that it would be attended with good effect. At the same time he regretted that he was under the necessity of declining to answer the particular questions which the Honorable and learned gentleman had asked. Not that there was the slightest disinclination on the part of the Government to put the Honorable and learned gentleman in possession of all the information connected with the subject which it was in their power to afford, either by placing the papers at his disposal privately, or forwarding them officially to the Judges of the Supreme Court, if they saw fit to apply

for them in the usual manner. But the Government did not think it expedient, and did not feel itself at liberty, in the present state of the question as regards the functions of this Council, publicly to answer questions unconnected with Legislative measures before the Council. If the Honorable and learned gentleman thought proper, on perusal of the papers, either to bring in a Bill relating to the law of Penal Servitude or otherwise, he would of course be at perfect liberty to do so. In the meantime, he (Mr. Beadon) could assure him that the subject engaged the attention of the Government.

SIR CHARLES JACKSON said, the answer which he had received placed him in a somewhat awkward position, because, according to the Standing Orders, he believed there could be no debate on a mere question such as he had put. Of course, when he put his question, he thought there would be no objection to supplying the information it called for. Could he have anticipated that any objection would be made, he should have put his question in the form of a Motion. Now, however, he thought it very desirable that there should be a decision on the matter, and he proposed to alter the questions he had asked, and to mould them into the form of a Motion. But before doing so, he begged to know from the Chair, whether that would be a proper course, or whether, according to the Standing Orders, a notice of Motion was necessary.

THE VICE-PRESIDENT said, he was not aware that any notice of Motion was necessary in a case of this kind. He thought that this case fell under the 37th Standing Order, which provided as follows :—

"Except in the cases in respect of which special provision to the contrary is made by these Orders, it shall not be necessary to give notice of a Motion ; but, if a Motion be made without notice given at a previous ordinary Meeting, the Council, upon the Motion of a Member, or the President of his own authority, may order the discussion upon such Motion to stand over, and to be inserted in the Orders of the Day for the next ordinary Meeting."

SIR CHARLES JACKSON then said, if that be so, he begged to move that a Message be forwarded to the Right Honorable the Governor-General in Council, requesting his Lordship in Council to inform this Council what progress had been made in erecting a Prison at the Neilgherries, and what accommodation such Prison would afford for European and American Convicts sentenced to Penal Servitude.

MR. LAING said, he would state in a few words the reason why the Members of Government were obliged to resist the Motion of the Honorable and learned Judge. The information asked for was of itself such as could very properly be given, and in fact would be given at once if it were applied for by the learned Judge individually, or by the Judges in the usual manner. But to return a distinct and public answer to the question put by the Honorable and learned Judge in his place in the Legislative Council, opened a very large constitutional question as to what was the position of this Council as an organ of public opinion, like the British House of Commons, in requiring information from the Government on matters of general policy not being subjects of immediate legislation. Now upon that question he wished it to be distinctly understood that he expressed no opinion whatever, nor, as he believed, was it the desire of his colleagues to do so. But it was notorious that the question had been raised on a larger matter, the Mysore Grant, and was now under the consideration of the authorities at home ; and he thought that the Members of Government would be wanting in their duty if they were to accede to any thing which would in any manner be establishing a precedent and thus fetter the question whilst it was pending and before it was finally settled. The delay could be for a very short period before it was decided whether this Council was or was not to be an organ representing public opinion like the House of Commons, and he would put it to the Honorable and learned Judge, whether it would not be better by common consent not to raise the question

farther at present, and to be content to take the information sought for, which could be given to him individually or upon the application of the Judges. Should he, however, persist in his Motion, he (Mr. Laing) had no alternative but to give his vote very reluctantly, and at any risk of being misconstrued, against a principle which, under the circumstances stated, he did not feel himself at liberty as a Member of the Government to concede at present.

MR. SCONCE said, he would state very briefly why he should vote in support of the Motion of the Honorable and learned Judge. It was to him (Mr. Sconce) a matter of amazement to expect that this Council could accept the excuse which had been put forward as a ground for the refusal of the Honorable Member of Government (Mr. Beadon) to answer the question of the Honorable and learned Judge. We were told that it was better to abstain from any proceedings which involved the direct action of this Council, because some other authority, we knew not who, had raised, certainly not with our complicity, the question as to what were to be the powers of the Council. The form in which this appeal had been made to us appeared to him to amount to this, that any action which this Council thought fit to take, and had successfully taken, in order that the Council should be better informed on matters forming the subject of its deliberation, should not be pressed in the shape of a Motion, because an opinion was entertained elsewhere that the Council had no power to do so. Why, it was as much as telling us that we, who were entirely satisfied as to our own authority, were going beyond the limit within which, in the opinion of others, the power of this Council was restricted, and that the proceedings of the Council should be, as it were, in abeyance till that doubt, not arising within the Council itself, should be elsewhere decided. Was not this as if a Relief Committee in the North-West should tell any man who was famishing from famine, that they must first get medical advice as to his power to live on short commons? That seemed to him to be precisely the way in which this Council had been treated. To keep back any information which the Council considered it essential to be possessed of, appeared to him to be a matter of bad policy, and in a manner contemptuous of this Council. He, for one, assuredly had no desire to encroach upon the authority of the Executive administration. But he could not help thinking that what the Honorable and learned Judge asked for was purely legitimate information, information intimately connected with recent proceedings of this Council, and information indeed directly bearing upon the Code of Criminal Procedure which was now about to come before the Council for final consideration. These were shortly his reasons for supporting the Motion of the Honorable and learned Judge.

MR. ERSKINE said that the course pursued by the Honorable Member of Government had taken him altogether by surprise. He had come down that morning to the Council without the least suspicion that they would be called on to discuss a question of privilege. As the question had been raised, however, it would be unbecoming in him not to say something as to the reasons which must influence his own judgment. The Honorable Member of Government who spoke last (Mr. Laing) had deprecated the raising afresh of the point thus again disputed, while the powers of the Council were under consideration in England. But who had raised this point afresh? Who, after thankfully answering a question on this very subject in 1859, now refused to answer it at all in 1861? Who, after answering on one Saturday questions not relating to legislative measures before the Council, refused on the next Saturday to answer the Honorable and learned Judge on the plea that he had no right to ask such questions? This was not the way in which to promote the smooth and useful working of the Council. There could be no doubt about former usage and precedent, as a reference to the Proceedings of the Council would amply prove. And even on other grounds; would any one

maintain that, if the Honorable and learned Judge was doubtful as to the working of a system of Penal Servitude in India, he must prepare a Bill on the subject and bring it forward in the Council, and that the Government should then give him information ; but that they should not give him information beforehand, so that he might judge whether a Bill was required or not ? He could see no ground in precedent, or policy, or reason, for such a course, and should therefore vote in support of the Motion of the Honorable and learned Judge.

MR. HARINGTON said, his views as to the powers and duties of this Council had been explained by him more than once, and were well known to the Council. On the present occasion, he did not propose to recapitulate what he had formerly said on this subject, but should confine himself to the Motion before the Council. With the Honorable Member for Bengal, and the Honorable Member for Bombay, he must confess, he was greatly surprised at the refusal of the Executive Government to furnish the information required by the Honorable and learned Judge (Sir Charles Jackson.) So far back as 1855, an Act was passed by this Legislature for substituting Penal Servitude for the punishment of Transportation in the case of Europeans and Americans. He understood that, at the time this Act was passed, a promise was given by the Executive Government to provide a suitable place at one of the Hill Stations in which Europeans and Americans, sentenced to Penal Servitude, might undergo the sentences passed upon them ; but up to the present time the promise had not been fulfilled, and Europeans and Americans, so sentenced, instead of being sent to a Jail at one of the Hill Stations, were kept in the Jail at Calcutta and subjected to what had no doubt justly been called by the Honorable and learned Judge the torture of confinement in that Jail. This could not be right. The Honorable and learned Judge having satisfied himself that little, if any, progress had been made towards the erection of a suitable place of confinement for European and American Convicts in pursuance of the promise given in 1855, asked the Government for certain information which he understood the Honorable and learned Judge to require—not to gratify a mere idle curiosity—but to enable him to judge whether the law should remain as at present, or whether some fresh legislation might not be necessary to relieve European and American Convicts from the torture which they were described as undergoing during their protracted confinement in the Calcutta Jail. The object which the Honorable and learned Judge had in view was surely a very proper one, and he (Mr. Harington) considered that the course which the Honorable and learned Judge had taken in seeking the information which he required from the Supreme Government, by means of his present Motion, was perfectly legitimate. He (Mr. Harington) did not understand how the information asked for by the Honorable and learned Judge could be refused. On former occasions, when information was required by Honorable Members to enable them to judge of the working of any particular law, or whether the modification of any existing law was necessary, it had never been withheld. In the course of last year, he had himself moved that an application should be made to the Governor General in Council for certain returns to show the working of a particular Section of the Rent law (Act X of 1859.) It was proposed by some Honorable Members to discontinue the privilege enjoyed by landlords under that law of bringing their suits for arrears of rent on Stamp paper of one-fourth of the value required for regular suits. It was thought that the law operated unequally and injuriously, and that landlords should be placed in respect of civil actions on the same footing as other suitors. He (Mr. Harington) did not agree, and in order to show that there was no ground for any change in the law, he moved for certain returns which the Supreme Government were asked to obtain and lay before the Council. The application was at once complied with,

and the returns, which had been received in consequence, showed, he thought, that he was quite right in the view which he had taken. Had it been otherwise, he should probably have based a proposition for an alteration in the law upon the returns which had been communicated to them. As it was, no change in the law seemed called for. He could see no objection to the Motion of the Honorable and learned Judge, and he should certainly vote in favor of it.

MR. BEADON said, his reasons for opposing this Motion were precisely the same as those which induced him on the part of the Government to decline answering the Honorable and learned Judge's questions. As he (Mr. Beadon) had said before, there was not the slightest indisposition on the part of the Government to give him the information he sought; and he must deny that there was any foundation for the opinion expressed by the Honorable Member for Bengal, that the Government had shown or intended any contempt to this Council by his refusing to answer the questions. It was not the object of Government to withhold any information from this Council, and every Member who chose could have access to the papers relating to any question coming before the Council. But the Government objected to being called upon through the Council to publish information which, on public grounds, they might consider it unnecessary or inexpedient to make public. The Honorable Member for Bombay had observed that the information for which the Honorable and learned Judge had asked had been refused, although it might have been required to enable him to determine as to whether it would be necessary for him to bring in a Bill on the subject. That, he (Mr. Beadon) begged to state, was a misapprehension, for, as he had said before, the information was at the disposal of the Honorable and learned Judge personally, or of the Judges of the Supreme Court, on application being made for the same in the usual manner.

THE VICE-PRESIDENT said that, on Saturday last, when, on behalf of the Honorable and learned Judge (Sir Charles Jackson), he postponed the question which stood in the Orders of the Day, he understood the Honorable Member of Government (Mr. Beadon) to say that he was not prepared to answer the question. He (the Vice-President) thought that that statement was rather ambiguous, as he was not sure whether the Honorable Member was unprepared to answer the question for want of information, or because he was not prepared to admit the principle of any Honorable Member taking the liberty to ask such questions. He therefore put it to the Honorable Member, whether he objected to give the information, or was not prepared to do so at that time. He understood the Honorable Member to say that he would obtain the necessary information and should be prepared to answer the question to-day. [MR. BEADON—No.] He certainly did not understand the Honorable Member to say that the application of the Honorable and learned Judge would be refused. But that was not very important. Whether the Honorable Member at that time admitted the right of Honorable Members of this Council to ask for information from the Executive Government, or not, was not material on the present occasion. We must act for ourselves and think for ourselves. But he (the Vice-President) was very much surprised to hear from the Honorable Member of Government (Mr. Laing) that, though the Government had no objection to give the information, still it was justified in refusing to do so on another ground, namely, that a great constitutional principle was involved in it which had to be settled at home. What was the great constitutional principle referred to? He (the Vice-President) knew of none. He remembered that he had made a Motion relating to the Mysore Grant, and that Motion was carried in the affirmative, to the effect that the Government of India should be requested to furnish the requisite information on the subject. Let us see what was the answer of the Government on that occasion. It was

not that "you have no right to ask those questions." But it was to the effect that part of the question related to a correspondence with the Secretary of State, which was not then complete, and that it would not be politic to answer that part of it, but that the request of the Council would be referred to the Secretary of State, and that the other portion of the information required would be laid before the Council. The answer was in the following terms:—

"In reply to the Message from the Legislative Council, No. 182, the President in Council, with the concurrence of His Excellency the Governor-General, informs the Legislative Council, that the interests of the public service forbid his ordering that the papers asked for by the Resolution, which accompanied the Message, should be laid before the Legislative Council, with the exception of the account specified in the first clause of the Resolution, which will be prepared and furnished to the Council as soon as practicable.

The other papers specified in the Resolution relate to a correspondence with the Secretary of State for India, which is yet incomplete; and the President in Council does not therefore feel that he would be justified in transmitting them to the Legislative Council.

The request of the Legislative Council will, however, at once be made known to the Secretary of State.

The President in Council has the honor to inform the Legislative Council, in reply to the concluding clause of the Resolution, that no payment beyond what has been usual of late years to the family of the late Tippoo Sultan is provided for in any account or estimate, of which the results have hitherto been laid before the Legislative Council."

The account was subsequently made out and laid before the Council. It was of no use by itself, and therefore he did not move to have it printed. But the principle was admitted. Two of the questions were answered, and the rest were refused because the Government did not think that, under existing circumstances, they ought to give that particular information. Now, the Honorable and learned Judge came down to-day and told us that in 1855 an Act was passed substituting Penal Servitude for Transportation in the case of European and American Convicts, because there was no place to which they could be transported, in consequence of the Home Government having refused to allow Convicts to be sent to the Colonies. No one ever thought or dreamt that a European Convict was to be kept imprisoned with hard labor in the plains of India for seven or fourteen years, or even for life, for Penal Servitude, by the Act in question, might be extended even to the term of a man's life. But the Act provided that Convicts sentenced to Penal Servitude should be imprisoned in such Jails as the Governor General in Council by a General Order should direct, leaving it to the Governor General in Council to provide proper Jails for the purpose. It was never intended that such Convicts should work out their sentences in a Jail in Calcutta or in the plains of India, though it was intended by the Act that they might be kept there as a place of intermediate custody. Now the thirty-three prisoners mentioned by the Honorable and learned Judge were merely on their road to Penal Servitude, and were now kept in the Calcutta Jail, until the Government could provide a suitable place for their working out their sentence. Was it not most reasonable and proper then for the Honorable and learned Judge, who had to sentence persons to Penal Servitude, when he found that they were still detained here, to enquire of the Government what progress had been made in the erection of a proper Jail? He (the Vice-President) believed that some of these persons had been confined in the Calcutta Jail for upwards of three years. Humanity dictated to the Honorable and learned Judge to come and ask this question. No objection was made by the Government to answering some portions of the questions relative to the Mysore Grant. The answer was given. But this question was one of vital importance to those who had the administration of justice in their hands, and also to every Honorable Member of this Council, whose duty it was to satisfy himself whether the preparations which had been made for carrying out the intentions of the Act of 1855 would be shortly completed.

But the learned Judge had been asked to withdraw his question until the

great constitutional principle had been settled, and some of the Members of Government objected to answer the question in the meanwhile, lest it should be drawn into an inconvenient precedent, and render the determination of the principle more difficult. He would ask, by whom was it proposed that this great constitutional question, as it was called—whether members of this Council were to be permitted to ask the Executive Government for such information as was necessary to enable them properly to discharge their legislative functions—was to be determined? Was it proposed that Parliament should deal with the question? We knew not whether they would deal with the whole subject of the Legislative Council this Session or not; and if the question were to be settled by Parliament, what harm could it do to give the information required? Or was it proposed that the question should be settled by the Secretary of State for India? He had heard of Constructions and Circular Orders being issued by the Sudder Court for the information and guidance of Judges and Magistrates and other Officers, so as to assist them in construing the law. But were we, standing here as men of honor and independence, to be asked to wait until the Secretary of State in Council or the Secretary of State alone should think fit to send us his Constructions or Orders as to the constitution under which we were acting? He (the Vice-President) denied the power of the Secretary of State to dictate to the Members of this Council as to the course which they should pursue in the way of legislation, or to direct them to act upon his construction of the Statutes upon which the constitution of this Council depended. If Parliament, in its wisdom, should declare—which was very improbable—that Members of this Council were to stand here and legislate without asking questions, or obtaining that information from the Executive Government which was necessary to enable them to discharge their duties conscientiously, he should feel bound to submit to their decision; but from that very moment he should cease to enter this Chamber as a Member of the Council. He could not consent to perform the important and most responsible duties of a Legislator, duties which might affect the liberties and even the lives of his fellow-subjects; that he was to sit here as an instrument to legislate, and that he had no right to seek in a legitimate manner the information which was necessary to enable him to judge for himself upon every matter that came before him in the discharge of his duty. But the Honorable Member (Mr. Beadon) had said that all the documents of Government were accessible to the Honorable and learned Judge. He (the Vice-President) did not consider that he had any authority to apply for information to the Secretaries without the consent of the Governor-General in Council. He was not a Member of the Executive Government, and he had no control over their papers and records, and he had no right to refer to them of his own authority. He thought that the Honorable and learned Judge was perfectly right in coming and asking the question as he did, and that this was the place and the only proper place to ask for the information which he required.

Then we were told that, if the Judges were to ask, the information would be given to them. Why should it be given to them? What was the constitutional principle which allowed the Judges to ask for information, when that privilege was denied to the Members of this Council? What benefit would it be to the Honorable Members for Bengal, Bombay, and the North-Western Provinces, if this information were to be privately given to the Judges in their Chambers? As Judges, they did not require the information, for in that capacity they had already discharged their duties. They could not recall the sentences which they had passed. Therefore, as Judges, they were not in a position to require that information. But as Legislators, when they found that the effect of a law which had been passed might be inhuman and cruel if proper means were not provided for carrying out its

provisions, they certainly had a right to ask for that information which was necessary to enable them to judge whether an alteration of the law was necessary. But whether they received the information or not, must depend on the judgment of the Right Honorable the Governor-General in Council. All that we now asked was that the Governor-General in Council be requested to give us the information. The Honorable and learned Judge had put the question most respectfully, and the only objection which had been taken to it was that some great constitutional question was now pending at home, and that, until that question was decided, nothing could be done. Suppose the Honorable Member for Bengal had asked the question instead of its having been put by the Honorable and learned Judge, and he had been told, "we protest against your asking for such information; if the Judges ask for it, we will give it to them." Until the constitutional question was settled, he (the Vice-President) should deem it right to ask questions, whether he received the information he required or not; and if he were called upon to legislate without having the information, he should, as an honorable and independent man, adopt such a course as might appear to him to be proper or necessary under the circumstances. He thought that the Honorable and learned Judge was perfectly justified in asking this question, and he (the Vice-President) should certainly give his vote in support of the Motion.

SIR BARTLE FRERE said, he should not have thought it necessary to take any part in this discussion, after having so lately expressed his opinion on the main question at issue, did he not wish to clear himself and his colleagues from the imputation cast upon the Government by the Honorable Member for Bengal, of treating the Council in a "contemptuous" manner. He was certain nothing was farther from their intention than to do so. Again, it was repeatedly stated by those who supported the Motion, that there was some disposition on the part of Government to refuse or withhold information. This also he wished most emphatically to deny.

How stood the case? Last Saturday, when the question stood on the Motion paper, he (Sir Bartle Frere), speaking for his own personal understanding of the matter, certainly supposed that the Honorable and learned Judge simply intended to put the question for his own information, and that his wish to obtain information was, in fact, with a view to do what he had done in 1859. And he (Sir Bartle Frere) had felt convinced that the Honorable and learned Judge would, on receipt of the information, take such steps as he thought necessary, either to press for some more active measures to provide Prison accommodation, or, it might be, for an alteration of the law. Had he done this—had he done what was done in 1859—he would, in his (Sir Bartle Frere's) opinion, have been perfectly right in putting his question, and the Government now, as in 1859, would have been very much obliged to him for drawing attention to the matter. But what did the Honorable and learned Judge now do? All the information the Government possessed was placed fully and unreservedly at his disposal, and that offer of full and unreserved information had been repeated to-day in that Council, and refused.

Now why did his Hon'ble and learned friend (Sir Charles Jackson) ask for the information? And why did he refuse to take it as offered? As very justly stated by the Honorable Member for the North-West, it was "not to gratify an idle curiosity," for the Honorable and learned Judge already knew what answer could be given, and, in point of fact, he had just been to the Neilgherries, had seen and examined for himself, and had no necessity to seek anywhere for information. He already knew more than the Government or any Member of this Council could tell him. He asked the information avowedly for the purpose of raising what was called a "Constitutional Question." Now the Honorable and learned Vice-President asked what was this constitu-

tional question? and in his remarks had, he (Sir Bartle Frere) thought, rather misapprehended what had fallen from His Honorable friend opposite (Mr. Laing). The Honorable and learned Vice-President had argued as though his Honorable friend had recommended them to stop in the exercise of their duties, until the constitutional question referred for the decision of the Secretary of State was decided. But he (Sir Bartle Frere) was sure that his Honorable friend (Mr. Laing) had no intention of being so understood. What he recommended was that, until questions now pending before the Home Government were decided, Members of that Council would do well to exercise a discretion in raising again and again a question which was already pending before the Home Authorities, and in this point he entirely agreed with his Honorable friend.

The question pending before the Home Government was a constitutional question, inasmuch as it affected the constitution of that Council. As to the power of any Legislative body to interrogate the Executive and to modify its action, Macaulay had long ago pointed out that the power had been virtually conceded from the date of his own appointment as Legislative Member of Council in 1833, with duties entirely independent of, and separate from those of the Executive Government. How far these powers should be pushed was a question of time and discretion. The Council was composed of a small number of Members legislating for a vast empire, and the question for them now to decide was, where should they stop in putting questions unconnected with any business before them on the Motion paper? It was almost impossible to imagine any question which might not, in some way or another, be connected with legislation. The point to decide was, how far the power of putting such questions could be pushed without interfering most inconveniently with the practical utility of the Council as a body for making laws?

When the Mysore Grant was under discussion, he (Sir Bartle Frere) pointed out that, when once we abandoned the plain and obvious course of confining our questioning to matters practically before the Council, we entered on a very wild and inconveniently wide field of discussion. He thought we need go no farther than this debate for an illustration of the soundness of this anticipation. He (Sir Bartle Frere) had no wish to undervalue the importance of this subject of Prisons for Europeans, it was unquestionably one deserving their gravest attention, and he entered entirely into the feelings of the Honorable and learned Chief Justice, when he described how the matter came home to himself and his colleagues as Judges on the bench. But the practical question was, what was the best and most effectual mode of doing our duty in this matter of getting proper Prisons built, or of amending the law which was passed in anticipation of such Prisons being built?

The Honorable Member for Bengal had compared the Members seeking this information to the famine-stricken inhabitants of the North-West asking for food and being told to get it in some roundabout manner, which amounted to a practical denial. But the simile was not even poetically correct, for his Honorable Colleague opposite (Mr. Beadon) not only did not refuse the information, but he offered it by a much shorter and more practically useful process than that of obtaining information by Motion and Debates in that Council. Nor could he concur with the Honorable Member that they were in any danger of a dearth of business or of information relating to it. With the Codes on their hands and all the projects of laws which they had before them, there was surely enough to satisfy the most unlimited appetite for information relating to legislation.

It was only fair, after having found fault with the course which His Honorable and learned friend (Sir Charles Jackson) had adopted, that he (Sir Bartle Frere) should state briefly the course which, in his opinion, should have been pursued. It appeared to him

that his Honorable and learned friend having received from the Executive Government the information tendered, and which was all they had to give, might then have shaped his course in that Council according to what he had so learnt. If the information satisfied him that Government was doing all in its power to provide Prisons, there would, of course, have been no necessity for further action. If the information were otherwise than satisfactory, he might have either moved an address to Government or brought in a measure for altering the law, or taken any other step he thought proper in his Legislative capacity. The production of information in a form accessible to every one would then have been ensured, as a matter of course, and much useless discussion, which was in no way conducive to the despatch of business, would have been avoided.

This course seemed to him (Sir Bartle Frere) not only the more practically useful, but entirely consistent with the duties and dignity of Members, whether as Judges, or as Members of that Council. The Honorable and learned Vice-President had quite misunderstood His Honorable colleague (Mr. Beadon), when he argued as though his Honorable friend had said that the information might be given to the Judges, but would not be given to the Honorable Member for Bengal, or to other Members who were not Judges. What he (Sir Bartle Frere) understood his Honorable friend to say, and what he felt sure he meant to say was, that there was the information for any Member who desired it, whether he asked for it as a Member of the Legislative Council, or as a Judge specially and personally interested in the matter, and that the Judges might have it, irrespective of their position as Members of that Council, if they chose to ask for it, as they did for other information bearing on their judicial duties.

It was not necessary for him, as a Member of Government, to oppose this Motion. It would probably be carried, as in the case of the Mysore Grant, and would probably be answered as in that case, as far as it was in the power of Government to give the information. But in his capacity as a Member of the Legislature, he (Sir Bartle Frere) must protest against this system of indiscriminate questioning, not for the purpose of eliciting information which would be readily and unreservedly furnished by Government, but merely for the purpose of raising a discussion as to the constitutional right of the Council to put questions to the Executive Government, when such questions were not needed in connexion with any Legislative action.

The issue had been already distinctly raised in the case of the Mysore Grant, and he (Sir Bartle Frere) was unable to see any useful result which could possibly follow its continual discussion in that Council, till we know what was likely to be done on the subject by the only body which was able to take effectual action in the matter.

SIR CHARLES JACKSON, in reply, said that, as far as he understood the objections which had been made to his Motion, they appeared to resolve themselves under two heads—1*st*, a question of right, and 2*ndly*, a question of discretion. As to the first, namely, the question of right, the information to be called for by his Motion had been treated as one of general policy unconnected with legislation. That however was not a correct statement, for the information was intimately connected with legislation. He had stated expressly in his opening remarks, that the Penal Servitude Act of 1855 was passed with a distinct understanding that proper places of confinement for European and American Convicts would be provided by the Government. He would put the case in this way. Suppose by the Currency Bill, the Government had taken power to issue ten Rupee Notes, and had at the same time stated that they would not issue them for the next two years, and that notwithstanding this undertaking the Government were to introduce them into the Mofussil sooner than they had said they would, could it be said that the Council had

no power to enquire into that matter, because the Bill had been passed? There could be no question whatever as to the right of the Council to interfere in such a case, and the Penal Servitude Act was precisely in the same position, and this question was therefore intimately connected with a subject of legislation. The information asked for by him was also useful with respect to future legislation. Suppose the Government had come down and said that, in the present state of the finances, they could not build the Jail at Jackatolla, (and it was to obtain their opinion as to the expediency of proceeding with this Jail, that his questions were chiefly directed), what would be the duty of this Council? It would have immediately to repeal the Act relating to Penal Servitude, and to consider and devise some other system of punishment instead of Penal Servitude. How could it then be contended that this was not a matter connected with legislation?

Then it was said, that the information had been offered to him. He must say, and he did so with the most perfect courtesy to the Honorable Member of Government, that he unhesitatingly declined to avail himself of such an offer. His reason for doing so was that he considered that this was the place where he should ask for and receive the information, because the matter was one connected with legislation, and every other Member of this Council was as much interested in it as himself. Then he was asked, where would have been the harm of his accepting the offer of the Honorable Member? The harm would have lain in this, that he should have been under the necessity of withdrawing his question, which had been entered in the Orders of the Day, and that would have been tantamount to an admission that the question was not a proper one, and that the Council had no right to ask for such information. He could not admit either of these positions, and he did not think the Government could reasonably expect him to put himself in such a false position.

As to the question of discretion, he really thought there could be no doubt on this score. It was a matter of the greatest astonishment to him, that any gentleman should think that there could be any objection to answering his question.

SIR BARTLE FRERE begged to correct his Honorable and learned friend. He (Sir Bartle Frere) had spoken of discretion as to putting, not of discretion as to answering, the question.

SIR CHARLES JACKSON resumed. He would only reply to the Honorable Member by reiterating that the indiscretion was entirely on the side of the Government. The Honorable the Fourth Member of the Government had admitted that this was a proper question, and indeed it could hardly be contended by any one that it was improper in a Judge, who had these sentences of Penal Servitude to pass, to put such a question? What possible harm would there have been for the Government to have answered at once, as they did in 1859. He really must say that the question of discretion was entirely on one side.

Then, again, it was said that a great constitutional question was pending before the Secretary of State. How long, he would ask, was this Council to wait for the solution of that question? For aught he knew, it might remain for years before it was settled by Parliament. It appeared to him impossible to act on suggestions of this nature, and that the Council must act on the basis on which it now stood as a Legislative Assembly. He thought moreover that it might be very useful that the attention of the Secretary of State should be drawn to the questions which this Council conceived it had a right to ask. If the Secretary of State was going to Parliament on this subject, it would be as well that he should know what questions might arise, and be thus enabled to provide against the quicksands which surrounded the subject, if he should consider them to be so. He (Sir Charles Jackson) thought that the question which he had put was one of great

importance, that he had every right to ask for the information, and that the question was one which it would have been only discreet for the Government to have answered at once. He should therefore press his Motion.

The question being put, the Council divided—

Ayes 5.	*Noes* 3.
Sir Charles Jackson.	Mr. Laing.
Mr. Erskine.	Mr. Beadon.
Mr. Sconce.	Sir Bartle Frere.
Mr. Harington.	
The Vice-President.	

So the Motion was carried.

SIR CHARLES JACKSON then moved that Sir Bartle Frere be requested to take the Message to the Governor-General in Council.

Agreed to.

NOTICES OF MOTION.

MR. SCONCE gave notice that he would next Saturday move the first reading of a Bill to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).

Also of a Bill relating to contracts for the cultivation and delivery of agricultural produce.

MR. HARINGTON gave notice that he would, on the same day, move the first reading of a Bill to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces); and said that he might mention that the object of the Bill was to raise the Duty on the various kinds of Sugar exported from the North-Western Provinces, and to double the existing rates.

The Council adjourned.

Saturday, March 16, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. B. Harington, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
Hon'ble Major General Sir R. Napier,	C. J. Erskine, Esq., and
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.

PRISON AT THE NEILGHERRIES.

THE following Message from the Governor-General in Council was read :—

MESSAGE No. 260.

The Governor-General in Council has the honor to inform the Legislative Council, in reply to the request conveyed in Message No. 190, that the Secretary to Government, in the Home Department, has been directed to furnish the Clerk of the Council with a Memorandum, containing the information asked for in the Message.

By Order of the Governor-General in Council.

(Signed) W. GREY,
Secy. to the Govt. of India.

FORT WILLIAM,
The 15*th March* 1861.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding the following Memorandum referred to in the above Message, regarding the construction of a Jail for the reception of European Convicts :—

MEMORANDUM.

The Court of Directors having, in a Despatch, dated 2nd of January 1857, authorized the erection in the Neilgherries of a Central Jail, capable of accommodating 100 prisoners, for the reception of European Convicts, the Government of Madras was requested in March 1857 to submit estimates for the building.

In the Madras Budget of Public Works submitted in 1858, the Madras Government included an item for a 'new Jail for native prisoners at Ootacamund,' and in a subsequent letter, dated 7th August 1858, early sanction for the work was requested on the ground that it had been designed partly as a prison for Europeans sentenced to Penal Servitude, until a larger prison could be constructed solely for their use. On this representation the work was immediately sanctioned, and the building is now drawing near to completion. It is stated by the Madras Government that it will hold thirty-six European Convicts in separate cells.

An estimate for the larger prison originally ordered, has not yet been submitted by the Madras Government. The following explanation on the subject was received recently from Madras.

"The construction of the large Jail for one hundred Europeans on the Neilgherries near Jackatolla, not at Ootacamund, has been delayed on account of difficulties in the way of fixing the site, of preparing the plan and estimates, and in providing funds. The site has been settled, the plan and estimates are under

preparation, but it has not been possible to make any allotment for the work in the Budget.

"It was supposed moreover that the small prison at Ootacamund, which will be finished in June next, would afford sufficient accommodation for a time".

W. GREY,
Secy. to the Govt. of India.

HOME OFFICE,
The 15th March 1861.

POLICE.

THE CLERK presented to the Council a Petition of the British Indian Association relative to the Bill "for the regulation of Police."

SIR BARTLE FRERE moved that the Petition be read at length, before the Motion for the third reading of the Bill was carried.

Agreed to.

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition of certain Protestant Missionaries relative to the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

MR. BEADON moved that the Petition be read at the table, as it related to a Bill of which he should have the honor to move the second reading presently, and as it also bore upon a Bill of which the Honorable Member for Bengal proposed to move the first reading to-day.

The Motion was carried, and the Petition read accordingly.

THE CLERK presented to the Council a Petition of the British Indian Association on the same Bill.

MR. BEADON moved that this Petition also be read at the table.

The Motion was carried, and the Petition read accordingly.

RECOVERY OF RENTS (BENGAL).

MR. SCONCE moved the first reading of a Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)." He said that the object of this Bill was to amend two points in Act X of 1859, and he did not expect that the amendments he intended to propose would give rise to any opposition, as they could not be but beneficial to all concerned. The first point was that, when claims were brought for the recovery of rent, the only remedy now provided to suitors was to arrest the defendant pending the decision of the suit. The consequence was that defendants had it in their power to alienate the property in the meanwhile. To remedy this defect, he proposed to extend to the suits tried under that Act the rules for "attachment before judgment" contained in the 81st and following Sections of Act VIII of 1859, commonly called the Code of Civil Procedure, which would enable plaintiffs to attach the property of the defendants pending the suit.

The other was a matter of less moment, though also, it seemed to him, calculated to be of practical benefit. Section 71 of Act X of 1859 contained an express prohibition against remunerating law agents employed by the suitors. Each party would, no doubt, be expected to remunerate his own agent, but it seemed to him (Mr. Sconce) proper that, if a party was cast in a suit, he should be required to pay the costs of the winning party. He therefore proposed to empower the Courts constituted under Act X of 1859, to award to agents costs not exceeding what was allowed to pleaders in the Civil Courts under Act I of 1846. These were the only points on which he proposed by this Bill to amend Act X of 1859, and he begged to move that the Bill be read a first time.

The Bill was read a first time.

REGISTRATION OF CONTRACTS.

MR. SCONCE moved the first reading of a Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of Agricultural produce." He said that the importance of the subject to which this Bill

related, and the general consent of all parties, both in and out of this Council, that something should be done to facilitate redress to parties engaged in agricultural contracts who needed redress, might probably enable him to dispense with any special statement of the necessity for this Bill. He would, therefore, proceed without further preface to say that the first part of the Bill was intended to effect what many parties had for some time desired to see effected, namely, the registration of contracts. He proposed to enable any local Government to constitute any number of Registry Offices, by appointing as Registrars, either public servants or persons not public servants, within any District under their Government. He did not here pretend to say how many such Offices should be created. He would leave that matter to the discretion of the local Government, who might appoint as many Registrars in any District as the wants or convenience of the community might seem to require. It was proposed that, in each case when a contract was presented for registration, the Registrar should satisfy himself of the identity of the party, if present, or the execution by him of the engagement, if absent, and the authority of his agent to appear before him. One important matter he had not touched, or rather had touched it by avoiding it altogether, namely, whether the registration of contracts should be compulsory. For his own part he thought it would not be safe to make registration compulsory. But if the Council, and persons out of doors most interested in the registration of contracts, should think that compulsory registration was better than optional registration, he probably could have no objection to make that change in the Bill.

The next point with which he proposed to deal was to extend and amend the law, which had hitherto been applicable to Bengal only, relating to contracts for growing Indigo, so as to give the party who should advance money for the cultivation of any article of agricultural produce a lien upon the crop. The Bengal laws on the subject were Regulation VI of 1823 and Act X of 1836. He proposed in the first place to make those laws general, that is, to adopt throughout India the principle of those laws. He proposed therefore that, whenever an advance was made to a cultivator for the cultivation of any article of agricultural produce on a specified portion of land, the party making the advance should have a lien on the crop until the contract was fulfilled.

Another point was that, if a third party, a stranger, who knew that a capitalist (if he might be so called) had advanced money, should take that crop, or should, for his own benefit, or the benefit of any other person, induce the cultivator to pass away the crop from the party who originally made the advance, that third party should be liable for full damages to the party who made the advance, or, as the Bill provided, should be liable "to an award of such an amount of penalty or damages as might be awarded against such cultivator under the terms of the engagement executed by him." Thus in such cases a double security would be afforded, namely, the cultivator and the third party who should join the cultivator in breaking the contract.

Another point referred to the remedy which the party making the advance should have in case of a breach of engagement. Act VIII of 1859 was in every man's hand, and he might assume that the provisions of that Act were universally known. Any person who made an advance was a party to a contract, and could under Act VIII of 1859, not only bring a suit, but had many remedies under that Act, which for his own protection, he might ask the Court to extend to him. If he chose to ask for a specific performance, that Act would allow it to be enforced, not only after a suit, but pending the suit also. In what cases a specific performance could or could not be ordered, he did not now say. He might have to state his views upon that point when the Bill on a similar subject came on to-day for a second reading. But assuming, as that Bill assumed, a specific performance by order of

Court to be possible, he considered it a material point to be assured that a remedy was provided in Act VIII of 1859. That was, he (Mr. Sconce) considered, a material point. Section 192 of Act VIII of 1859 provided as follows :—

"When the suit is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the Court with the consent of the plaintiff may decree the specific performance of the contract within a time to be fixed by the Court, and in such case, shall award an amount of damages to be paid as an alternative, if the contract is not performed."

But an additional security was provided by Section 200, which provided as follows :—

"If the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by the seizure, if practicable, of the specific moveable and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the Court, or by both imprisonment and attachment, if necessary ; or if alternative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money."

Act VIII of 1859, therefore, provided, not only for a decree for specific performance, but for the execution of that decree. And he must yet remind the Council that it did more, for after the institution and pending the decision of suits, Section 93 of the Act permitted an injunction to issue to restrain a breach of contract. Whether you looked therefore to the suit when commencing, or to the termination of the suit, or to the execution of the decree, you had your remedy under that Act, if the law allowed you a remedy. But possibly the Courts might find some difficulty in applying the law of specific performance universally to agricultural contracts, and therefore, to some extent, he proposed to remedy what might be considered a practical defect, as to the power of the Act referred to for dealing with suits of that character. He accordingly proposed to provide that, on the institution and pending the termination of the suit, for the delivery of produce grown upon the strength of an advance made—for example, for a crop of sugar as described in the correspondence received from the Madras Presidency—the Court should have power to put the plaintiff in possession of the disputed crop, on such terms, as was provided in the Bill, as to the custody, re-delivery, gathering, or reaping of the crop, and the eventual fulfilment of the engagement, and as to the security to be given by the plaintiff for the due performance of such terms as the Court might direct. The direct effect therefore of this Clause was to secure to any party his lien upon a crop, as soon as he brought a claim for the same.

As he had said, the Section to which he had alluded, referred to a growing crop, and to the delivery of crop. But he need not remind the Council that the great majority of cases in Bengal, relating to breach of contract, arose from the non-cultivation of the land, and for these cases, he intended, by this Bill, to provide a special remedy. He apprehended that in such cases the Court, on the application of the plaintiff, should call upon the defendant to give security for the complete performance of his contract. He was charged by the plaintiff with non-performance. He had undertaken to cultivate and did not cultivate. He (Mr. Sconce) therefore permitted the plaintiff to require the Court to demand security from the defendant for the performance of his contract, and if the defendant should not give security, the Court would have the power to transfer the land, for the cultivation of which the defendant had refused to give security, to the plaintiff, to enable him to carry on the cultivation which the defendant had failed to perform.

These were the main points of this Bill. In other respects he had reserved the right of land-owners to recover their rent from growing crops. As a general rule, standing crops were hypothecated to land-owners.

Such was the Bill, the provisions of which he considered better adapted to

meet the failure to perform agricultural contracts, and involved more legitimate remedies than the Bill which had already been brought in and read a first time, and which was proposed to be read a second time to-day.

The Bill was read a first time.

SUGAR DUTY (NORTH-WESTERN PROVINCES).

MR. HARINGTON moved the first reading of a Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)." He said, the object of this Bill was to amend so much of Section 2 Act XIV of 1843, as fixed the rate of duty upon misree, kund, chenee, and all clayed and refined sugar, exported from the North-Western Provinces, to which alone the Act applied, at 8 annas per maund, and upon goor, rab, sheerah, and all unclayed and unrefined saccharine produce, similarly exported, at 3 annas per maund. The Bill proposed to double the rates of duty now taken on both discriptions of sugar and other saccharine produce when carried across the Frontier line. It was expected that the incidence of the higher duty would be almost entirely in Central India, to which the greater portion of the sugar manufactured in the North-Western Provinces, including the Doab, Rohilcund, and the Benares Division, was exported for sale. The sugar manufactured in the North-Western Provinces, which was consumed in those Provinces, paid no duty, and the River Ganges, by which route the producers of sugar in the North-Western Provinces, who desired to send their sugar beyond the limits of India, forwarded it to Calcutta, was left perfectly free. Consequently the producers of sugar in the North-Western Provinces would not have to compete at a disadvantage in the Calcutta market with the producers from other places in that market on account of the increased duty. The fact that that duty would be paid, not by our own subjects, but chiefly by the subjects of Foreign States, was strongly urged by the authorities in the North-Western Provinces as an argument in favor of the proposed alteration in the law. From calculations and enquiries which had been made, it was believed that the sugar which was manufactured in the North-Western Provinces and exported to Central India would well bear the higher duty now proposed to be placed upon it, and that the trade would not be injuriously affected thereby. It was also believed that the increase in the price of the sugar on which the higher duty would be paid, would be scarcely perceptible. The amount of duty collected at the present rates exceeded five lakhs of Rupees per annum. This amount should be doubled at the higher rates. The sum was certainly not very large, but such as it was, it would be very acceptable in the existing state of the finances, and the proposed duty had the great advantage, that it would be raised by means not of direct, but of indirect taxation, that it would require no new agency to collect it, and that its collection would entail no additional expenditure upon Government. The same establishment which collected the present duty would collect the higher duty. For obvious reasons, the force of which had been admitted on former similar occasions, the Government had thought it proper to direct that the higher rates of duty should be levied at once, or rather he should say from the ninth of this month, on which date notice had been given to the Council of the intention to bring in the present Bill, and a Section had been added to the Bill, to which it was hoped the Council would readily assent, to indemnify the Collectors of Customs and others engaged in collecting the higher duties during the interval which must elapse before the Bill could pass into law. This was what was done in the case of the Bill brought in by him at the end of the year before last for raising the duty on salt in the Presidency of Bengal. He was sure the Council would be glad to hear that the effect of that Bill had been to increase the Salt Revenue in the North-Western Provinces at the rate of nearly

half a million of pounds sterling per annum. In the Lower Provinces of Bengal also there had been a considerable increase. At the time the higher duty was imposed, it was feared by many that the imports would fall off in consequence. He was happy to say that these fears had in no way been realized. Instead of a decrease the quantity of salt imported had gone on steadily increasing, which was very satisfactory. He would only further remark that the present Bill had the entire concurrence of the Supreme Government, of the Honorable the Lieutenant-Governor of the North-Western Provinces, of the Sudder Board of Revenue at Allahabad, and of the Commissioner of Customs, whose duty it would be to carry out the provisions of the Bill when it should become law.

MR. LAING seconded the Motion, which was put and carried, and the Bill read a first time.

SMALL CAUSE COURTS.

MR. BEADON begged to move the second reading of the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)." He said that, when he moved the first reading of this Bill a fortnight ago, he explained that the object of it was simply to repeal that Clause of Act XLII of 1860, which prevented Courts of Small Causes constituted under that Act from exercising any other Civil Jurisdiction. He had imagined that the object would be attained by simply repealing that Clause, and authorizing certain classes of Judges to exercise the powers of a Small Cause Court Judge. But it was subsequently pointed out to him by the Honorable Member for the North-Western Provinces that the Bill, as framed, would not entirely meet the object in view, or be in harmony with the Code of Civil Procedure. The Honorable Member had been good enough to add a few Clauses for this purpose, and it was his (Mr. Beadon's) intention, if the Bill be read a second time, to refer it to a Select Committee with an instruction to report under the 62nd Standing Order as to the best form in which the Bill should be framed previously to publication. With that explanation, he begged to move the second reading of the Bill.

The Motion was carried, and the Bill read a second time.

MR. BEADON then moved that the Bill be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover, with an instruction to submit a preliminary report under the 62nd Standing Order.

Agreed to.

BREACH OF CONTRACT.

MR. BEADON begged to move the second reading of the Bill "for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce." In doing so, he said he would briefly call the attention of the Council to the Petition which was presented last week by the Indigo Planters' Association. That Petition, after declaring that the Association would not have had reason to object to the general provisions of the Bill, had it become law in October last, stated that, "having been brought in only now, it will in its present shape cause serious loss and hardship to your Petitioners for the following reasons." The first reason was—

> "Because under it all contracts made previous to the Act being passed, will be excluded from its provisions, and whilst your Petitioners agree that no legislation should have a retrospective effect, they submit that to punish a breach of an engagement committed after the passing of the law, is not retrospective,"

and they pray—

> "that the 6th Section of the proposed Bill be modified, so as to make it applicable to all breaches of engagements, committed after the Act has been passed without reference to the date of the contract."

Now apart from the question whether, if the operation of this Act were

made applicable to existing contracts, it would be retrospective legislation or not, he thought there were several reasons why the operation of this Bill should not extend to existing contracts, any one of which reasons would, in his judgment, be quite conclusive against it. The first reason was that the Indigo ryots in Bengal had been informed by the Lieutenant-Governor of Bengal, under the authority of the Governor-General in Council, in a Notification issued in September last, that it was—

"not the intention of the Government of India to re-enact the temporary law for the summary enforcement of Indigo contracts by the Magistrate, which law will expire on the 4th October next, corresponding with the 19th of Assin. After that date, actions for breach of existing contracts will be cognizable as before, by the Civil Courts, but it is the intention of the Government to provide as soon as possible for the more speedy adjudicature of such cases, by increasing the number of Courts, and by simplifying Procedure."

Now there could be no doubt to those who were aware of the circumstances, under which that Notification was issued, that the Government of India, in sanctioning that Notification, intended it to apply only to contracts then existing. But it had been considered in some quarters that the words might be construed so as to apply to contracts existing at any time at which an Act might be passed, bringing such contracts within the cognizance of the Magistrates. Although he had no doubt as to the intention of the Government of India at the time, still he admitted that the words of the Proclamation could bear that construction; and he therefore thought that it would be contrary to the spirit of the Proclamation, as it stood, to make this Bill applicable to contracts now existing or existing at the time that the Bill might be passed into law. Whether this Council was bound by the promise of the Government of India or not, there could be no doubt that the Government of India and every individual Member of that Government was bound by it, and therefore he, for one, could be no party to a law which would make the compulsory enforcement of contracts by summary process before the Magistrates, applicable to contracts made before the passing of the law.

Another objection to the application of this Bill to existing contracts was that we could have no evidence, such as it was proposed to require under this Bill, that the contracts were really and *bonâ fide* entered into and executed at the time at which they purported to have been executed. Without intending to impute blame to any one, or to cast any reflection, except on the careless and rotten system on which Indigo planting had been carried on for years, he would observe that it had been a common practice to enter into verbal contracts with ryots for the cultivation of Indigo, and, when it afterwards became necessary to bring the ryots into Court, to fabricate documents not differing, he believed, in their terms from the verbal contracts, but certainly having no existence when those contracts were made. He thought it absolutely necessary that there should be some evidence of written contracts having been duly executed at the time when they were said to have been made, and that it would be unsafe to legislate where no such evidence could be had.

A third objection to make the law retrospective in its operation was that the Bill was applicable not only to Indigo, but to all agricultural produce, not merely to Bengal, but to the whole of India: and he certainly was not prepared to propose to the Council a project of Law which would make contractors for agricultural produce all over India liable to punishment for the breach of engagements entered into, at a time when the violation of such engagements entailed only Civil consequences.

The next request made in the Petition of the Indigo Planters' Association was that the term of the contracts be not limited as to time, and that the value of the produce be extended to one hundred Rupees. He would not now offer an opinion on these two points. They were questions of detail, though of considerable importance, and did not

affect the principle of the Bill. He thought, therefore, that they had better be left to be dealt with by the Select Committee.

The Petitioners further requested that the Standing Orders be suspended, so that the Bill might be passed at once, and the reason given was—

"that, if Indigo sowings are made at all in lower Bengal this year, they must in 9-10ths of the land be effected within the next thirty or thirty-five days, and that, if the law be not passed immediately, it will be useless and inoperative for the present season."

Now the whole force of this request depended upon, whether the action of the Bill should be retrospective or not. It was quite clear that, if the Bill was to come into operation in respect only to contracts made after the passing of the law, it made no difference whether it was passed immediately or allowed to run through its usual course according to the forms of the Council. He had already stated his opinion that the Act ought not to be made applicable to existing contracts, and he could not therefore support the request, that the Bill should be hurried through the Council. Indeed, he was of opinion that the Bill, affecting as it did agricultural and commercial interests throughout India, was one on which ample time should be given for discussion, and for collecting opinions from all parts of the country and from all classes of persons likely to be affected by it.

It had been mentioned to him, as an objection to the Bill, that persons who contracted in consideration of an advance, were not sufficiently protected against employers who, instead of making the full advance set forth in the contract, might keep back a part or the whole of it, and apply it towards the liquidation of old debts. He was not prepared to admit that there was any need of giving greater protection in this respect merely because it was preferred to make wilful breach of contract punishable, than there would be if they were the subject only of a Civil action; and he was also disposed to think that any precaution that might be taken to prevent the deduction of old balances from new advances might be easily evaded, for nothing would be easier than, after a ryot had received his advance in full, to oblige him to refund a portion of it in liquidation of an old debt. Still if the Council were of opinion that it was advisable to provide more distinctly against such a practice, a few words might be added to the fourth Clause to the effect that, if it appeared to the Magistrate that the full advance had not been made, the complaint should be dismissed.

It had also been suggested to him that the eighth Clause might be advantageously omitted, and that, by omitting it, some objection which had been felt to the Bill on the ground that it might become law in one place and not in another, would be removed. He must say he entirely agreed in this suggestion. His only object had been to make the Bill agree as far as possible with Act XIII of 1859, and to go no farther than that Act went. But he was so firmly convinced that the principle of the Bill was a right principle, and one of universal application to all petty contracts made with the laboring natives of India, that he heartily agreed to strike that Clause out of the Bill, so that it might come into force at once throughout India without any occasion for the immediate action of the Executive Government.

These, however, were points of detail, and he had no doubt that there were many others, in which it would appear to Honorable Members that the Bill was susceptible of improvement. There were also other points referred to in the Petitions presented to-day, which were well worthy of consideration. He must say he had no partiality for the particular form in which the Bill was drawn. He had adapted to his purpose the form of a law already existing. He believed that that law had been carefully framed and considered by gentlemen of greater experience in such matters, and greater ability to deal with them than himself; he knew that, so far as it went, that law had been entirely successful in its operation; and he supposed that the Council would

more readily accept a Bill prepared in the same form, to meet cases of an analogous character than one framed on any new principle or in any new shape. It was his intention however to propose, if the Bill were read a second time, that it should be referred to a Select Committee in order that all the suggestions for its improvement might be carefully considered, and that a preliminary report might be made to the Council before the publication of the Bill in the Gazette. All he would ask the Council to do now was this, to affirm the principle that persons in the condition of laborers who freely received a *bonâ fide* advance of money, and in consideration thereof voluntarily contracted to cultivate or deliver produce, if they wilfully and without reasonable excuse failed to perform their engagements, and either persisted in their refusal or would not pay such damages as the Magistrate might think reasonable, should be liable to punishment.

With these remarks he begged to move that the Bill be read a second time.

MR. SCONCE said, he was wholly opposed to this Bill, both in form and in substance. In making that statement, he was sensible, considering the manner in which the Bill had come to us under the auspices of the Government of India, that he had a large number of the Members of this Council adverse to him. He would therefore the more earnestly appeal to them that, if they thought that this Bill did not conform to that standard of right and wrong, which, as legislators, we were bound to adopt, or to those principles of social justice and enlightened jurisprudence which regulated the legislation of all civilized countries, he hoped that even those who came to support the Bill would agree with him in the opinion he was about to express, that the Bill should not be allowed to pass the second reading. He need not give any assurance to the Council that he was not insensible of the difficulties against which those gentlemen who had made advances for the cultivation of Indigo had to contend. If it only depended on that point, he would abstain from making any opposition to the Bill. But it was not so, and he would proceed to show what he conceived would be a more adequate and certainly a more just enactment. We had more important measures to consider than merely laws to be in force for one or two years only. The Bill before the Council was of a permanent nature, and we ought therefore to see that the Acts we put into the Statute book were such that we should not be ashamed of them hereafter. He would recall to the attention of the Council some of the circumstances which had preceded the introduction of this Bill, and of the explanations that had been offered to the Council with a view to induce Honorable Members to accept the principle of the Bill. It was not many months since the Penal Code, with which we must all be familiar, was passed by this Council. There was in it a provision for cheating, and he would ask the Council to consider if this Code, after having been so carefully considered, was so imperfect that we should now be called upon to create a new offence. But the offence in question was not forgotten when the Council passed the Penal Code six months ago. If the Council would turn to the head of "Cheating" in the Code, they would find how offences against Indigo might be dealt with. Illustration *G* of Section 415 provided as follows:—

"A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of Indigo plant, which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the Indigo plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

(MR. BEADON—hear, hear.)

Observe in this latter case, the Penal Code said that "A does not cheat," but we were now required to say that he "does cheat." Let it be observed, therefore, that this Bill not merely proposed to create a new offence, but, what was infinitely more objectionable, it proposed to reverse the rule of

law to which the Penal Code gave effect, by declaring that to be an offence which the Penal Code showed could be redressed only by a civil action. The cheer with which his Honorable friend (Mr. Beadon) had received what he had now said, reminded him that, in the speech by which the Honorable gentlemen had introduced the first reading of the Bill, he had not overlooked the definition of cheating in the Penal Code, but undertook to show that the Code had erred in the determination of what was or was not fraud. His Honorable friend was reported to have said :—

"If a ryot took an advance from an Indigo Planter and engaged to deliver a certain quantity of produce, intending at the time not to fulfil his engagement, he was held to be guilty of cheating. But how could such intention be possibly proved? and what was the extent of the difference in point of moral guilt, between a man who made an agreement, intending at the time to break it, and one who made an agreement in good faith, and resolved, an hour or a month afterwards, to play false?"

His Honorable friend seemed to argue as if there were no difference between taking money on false pretences, and taking money without a fraudulent pretence or assurance. Making an engagement in good faith, and making it on false pretences, were represented to be identical; and in that striking misapprehension might be found an explanation of the course taken in the preparation of this Bill. No doubt, in the two cases put by the Honorable gentleman, there was one point of resemblance. In both cases, an advance was made on an assurance that the contract would be fulfilled. But in the one case, the advance supposed to have been given was given in consequence of fraudulent representations, and in the other by no deception at all, but under the honest intention on the part of the cultivator to fulfil the engagement in consideration of which the advance was paid to him; and yet the Honorable gentleman asked, what was the difference between the two cases? If the Council agreed with him (Mr. Sconce) that there was a material difference, a difference going to the very elements of Criminal Jurisprudence, he would confidently ask them to vote with him.

Then, again, the Honorable Member this morning repeated that ryots who took advances were in the position of laborers. What he said a fortnight ago was as follows :—

"There was no difference in principle between the case of a mason who contracted to build a stable, or a laborer who engaged to work for so many days, and that of a ryot who engaged to deliver produce. That a ryot was a laborer, whatever else he might be, there could be no doubt. It was for the produce of his labor that he contracted, and his field was no more to him in fulfilling his agreement than his skill and tools to the workman, or his capital to the petty contractor."

Observe that it was upon these opinions, and this statement, that the Bill was founded. The ryot was a mere workman; his field was no more to him than his skill and tools to the workman. The land of a cultivator, we were told, was no better than his plough; an instrument, as the plough was an instrument; whereas, what was called the produce of the soil was the produce of the ryot's labor. It was thus that land and labor were confounded; and that a ryot was converted into a laborer living upon wages. The manifold returns of the land and the purposes to which they were applied were ignored, and the Honorable gentleman would have us believe that the fruitful fat of the earth was but the sweat of the ryot's brow. In the Appendix to the Report of the Indigo Commission would be found ample information as to the position of ryots in connection with Indigo Planting. Take the case of the Bengal Indigo Company as an instance. It would be seen, that the ryottee land (excluding neejabad) was 61,000 beegahs. The advances annually made to the ryots varied from 50,000 to 75,000 Rupees. The ryots were in number 23,200. The average advance to each ryot, therefore, was something under three Rupees in the year. Three rupees to a ryot was say one month's wages. If you looked, therefore, at the advance as determining the position of the ryot,

you would find that what you might choose to call wages did not cover more than wages for one month in the year; while for the remaining eleven months the ryot had from other sources to support himself. Compare the total advance made by this great Company with the land engaged for, and you find the same result. As he had already said, the land was 61,000 beegahs, and on an average the advance appeared to be about one Rupee to the beegah. What was the produce? He might, with safety, assume that a beegah cultivated with rice would yield eight to ten Rupees a year, so that the aid given to a ryot by way of an advance was no more than equivalent to one-tenth of the produce. He (Mr. Sconce) hoped that the Council would see that the Honorable Member was wholly under a misconception in dealing with the ryot as if he was a laborer. This was by no means a contest as to words. In this case a word made the principle of the Bill; and by the misapplication of a word an analogy was found for applying the same law to workmen and agriculturists.

In another respect, the Bill was wholly objectionable. It was limited to the delivery of produce valued at fifty Rupees. You were afraid to extend it to larger transactions. It was a Bill, the principle of which you confined to the poor. You knew that if you took the limit at five hundred Rupees, it would be impossible to maintain its principle. There was then to be one law for the rich and another for the poor. There was an old legal maxim, "*De minimis non curat lex.*" This Bill was intended wholly for small things. If it were founded on any just principle, it should be applicable to large as well as small contracts; but you virtually disavow your own principle in embracing only small transactions and absolving greater offenders from the cognizance of the law. It seemed to him difficult to know what particular part of the Bill to commence with. It applied to the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce. Every word you read pointed to a new circle of offences. Take, for example, the manufacture of agricultural produce. What did this expression include? Some might apply it to bakers, some to brewers, others possibly to butchers. For himself he would hold to none of these, but there was one possible construction of the term, which was of more serious moment. He feared under these words lay a project to advance the interest of the Ditch—an attempt to get in the fine end of the wedge—and he was concerned to say that his Honorable friend, to use the words of the fifth Section of his Bill, was an abettor of the attempt. Within the definition of this Bill, it might be competent to a Calcutta merchant, who had made advances for the manufacture of Indigo, to proceed against the unhappy manager of a factory who had failed in part (the Bill said "in part") to manufacture Indigo, and might be thrown into a Mofussil Jail for three months. Did the Honorable gentleman intend this or not? He knew he did not; and the intentional omission entitled him to say that this Bill in its application forsook the path of justice.

One point that met us on the threshold was this—It was a Bill avowedly to direct the specific performance of a contract. In the first place, a Magistrate would have to consider the reasonableness of the excuse which the ryot might offer, and if he thought a reasonable excuse had not been offered, it might be his duty to order the ryot to perform the contract. Under this Bill, however, he desired to say that the very attempt to take any such proceedings was absolutely impossible. The contracts to which it referred were not required to specify the lands upon which produce was to be cultivated. They were simply agreements to cultivate and deliver agricultural produce, and necessarily furnished no dates for the interference of the Magistrate. The exact specification of the land was obviously material to the performance of the contract. Without that the Magistrate would

have to choose throughout the whole District. In the Bill which he (Mr. Sconce) introduced this morning, he proposed to give the Planter a lien on the crop, if the land on which it was grown was defined in the engagement. But under this Bill, the position of the land supposed to be referred to in contracts was altogether undetermined; it might lie in any direction, at any distance to the North, at any distance to the South; and under such circumstances, the breach of contracts could by no possibility become the subject of judicial cognizance. This defect met one on the very threshold, but the difficulty increased when you attempted to go against the laws of nature and the laws of man, against physical laws and moral responsibilities. These contracts related to the cultivation, production, and delivery of agricultural produce. He would confine himself to these three words. Supposing a complaint was brought against a ryot for non-production, what was the purpose of this Bill, and in what manner would it have effect? He would venture to say that, according to the well recognized principles of an intelligent jurisprudence, contracts such as these must be left absolutely to the discretion of the person contracting to determine as to the time of ploughing, sowing, or reaping. The judgment, skill, and independent action of the agriculturist were of the very essence of the contract. No Magistrate could presume to dictate to a contracting party in what manner a farmer should plough his land. Suppose it was a case of weeding; how could the Magistrate say, you must weed once, twice, or thrice. Suppose it was ploughing; was the Magistrate to tell him to plough twice or three times? Was he judicially to determine that question? Could the Magistrate watch the times and seasons? Could the Magistrate presume to say that on this day you must plough, or sow, or weed? Suppose the Magistrate were to say, "plough in the morning," and the man said, "No, it was too wet or too dry;" would the Magistrate put him into jail? But that was not all. He had already said that the matter was essentially beyond the competency of a Magistrate, and that there were certain contracts which the law assumed, from their very nature, must be left to the discretion of the parties who undertook to perform them. He felt that the consideration he had given to the subject did entitle him to say that such engagement could only be carried through by the skill and discretion of the contracting party and not by the dictation of a Court. But supposing the interference of some Court to be possible in order to direct the specific performance of contracts such as these, he would say with confidence that it could not lie with a Magistrate, but it must be a Civil Court, a Court of Equity, to make such orders. Take for example the question of advances. As this Bill stood, an advance might be merely nominal—two Rupees a beegah or two pice. He (Mr. Sconce) would say unreservedly that no Magistrate in any country would be permitted to determine whether the consideration given in a contract was such as to require the party to carry out the contract. He understood clearly enough the principle that a man who chose to make a bargain must abide by his bargain, and often the adequacy of the consideration paid would not be discussed by the Courts. But there were cases in which, upon the ground of inadequacy of consideration, a Court of Equity would refuse to direct the performance of a contract. Supposing the consideration paid to be grossly small in comparison with the thing to be done; and supposing one party to be poor and ignorant and the other man rich and influential. That alone would afford cause to a Court of Equity to entertain the objection and dismiss the suit. But again he must ask, was it only a question of Courts? Then, suppose two Courts to be at the same time and the same place equally available, the one a Magistrate's Court, the other a Civil Court; he must hold the one to be a competent and the other an incompetent Court. Why should not the Civil

Court which, looking to the issues to be tried, was the most competent Court, be the Court at which the case should be dealt with? Was it supposed that the Civil Courts had no time and were encumbered with too many forms? Then increase your Courts and simplify your forms. Whatever you do, don't turn aside parties from a Court where justice would be rightly administered to a Court where justice would be wrongly administered. In introducing his Bill this morning, he said that he had material doubts whether even in a Civil Court the specific performance of contracts like these could be directed. He was quite satisfied that this could not always be done. If they could not come before a Court of Equity, would any gentleman say that they could come before a Magistrate's Court? Whatever weight might be attached to what he said, he would observe strongly that a mighty wrong would be done if the Council allowed Magistrates to entertain cases of this description. It was an admitted principle that Courts of equity would not pretend to give specific performance in cases where they could not carry out their own orders: impossibility was a clear bar to specific performance. He had stated to the Council the ground on which he held these cases to be impossible. In the case of Gervais *versus* Edwards, the presiding Judge, Lord Chancellor Sugden, in his judgment, observed:—

"As far as the merits of the case go, I would decree the specific execution of this contract; but I do not see how it is possible. If I execute it at all, I must execute it *in toto*; and how can I execute it prospectively? The Court acts only on the principle of executing it in specie and in the very terms in which it has been made; therefore, when you come to the specific execution of a contract containing many particulars, you must see that it is possible to execute it effectually. The Court cannot say that, when an event arises hereafter, it will then execute it. In the case of a decree for the execution of a contract for the sale of timber, it is no objection that it is to be cut at intervals; that is certain, and the mere delay will not prevent the Court from executing it; there the agreement is executed in specie; the Court decrees to one the very timber contracted for, to the other the very price. If I am called on now to execute this agreement, I can only specifically execute a portion; whereas I am bound to execute it all."

And again,

"No precedent has been cited; but, indeed, none is necessary. It is a question of principle; and I am clearly of opinion, that if I gave a decree now, it would not be a specific execution of the contract, but only a declaration that there ought to be a specific execution of it hereafter. I must therefore leave the plaintiff to his remedy at law."

That was just such a case as this. You had a complaint involving many successive operations, ploughing, sowing, and weeding; and what was worse, the contract that you attempted to perform, you only half performed, for you could not provide that a ryot should receive the price of his crop. In another well known case, Lumley *versus* Wagner, the presiding Judge, Lord St. Leonards, observed as follows:—

"Beyond all doubt, where a lease is executed, containing affirmative and negative covenants, this Court will not attempt to enforce the execution of the affirmative covenants either on the part of the landlord or the tenant, but will leave it entirely to a Court of law to measure the damages; though with respect to the negative covenants, if the tenant, for example, has stipulated not to cut or lop timber, or any other given act of forbearance, the Court does not ask how many of the affirmative covenants on either side remain to be performed under the lease, but acts at once by giving effect to the negative covenant, specifically executing it by prohibiting the commission of acts which have been stipulated not to be done."

He (Mr. Sconce) had read this, mainly to support the view which he was about to mention. A complaint was made that a ryot, who had contracted to grow indigo, would not do so, but would sow rice. A Civil Court, if the case went there, might, by injunction, direct the party not to sow rice. You knew, on the most unexceptional authority, that a Court of Equity would not attempt to enforce affirmative covenants, but that by injunction it might restrain an act that a party had bound himself not to do. That injunction the Civil Courts of this country had power to make

under Act VIII of 1859, and you would go beyond all judicial authority and every principle of legality if you passed this Bill.

These were the reasons for which he was opposed to the principle of the Bill. There were, however, objections to various details of the measure, with which it was unnecessary at present to detain the Council. He would only notice Section IV. We were told the other day that this Section had been introduced in order to give some security to the ryot that he would be fairly dealt with by the Planter, *a quid pro quo* in short for the penalties proposed against himself. The Section provided that, "if it shall appear to the Magistrate that the contract has been obtained by means of fraud, force, or intimidation, the complaint shall be dismissed." He hoped the Council would not be carried away with the provision of this Section. The Penal Code contained ample provision for criminal force, intimidation, or cheating. It was a mere shadow of a substance to introduce what would in any way justify a measure which would inflict great injury on the ryots.

With these remarks he begged to repeat that he must oppose the second reading of this Bill.

MR. LAING said, he was glad that the issue had been raised on the present occasion with a distinctness worthy of the question before the Council. It was unnecessary to go into details, because the question involved in the second reading was the broad principle whether breaches of contracts should, under the circumstances described, be treated as subjects of Criminal or of Civil legislation. The Penal Code, as it was well stated, admitted the principle that anything in the nature of cheating was a subject for Criminal prosecution. The question then arose whether the definition in the Code provided sufficiently for such cases as those in which a person who executed a contract and took an advance under it, neglected or failed to use reasonable exertions to fulfil his part of it, and inflicted injury on the other party to the contract by such dishonest contract. That, he believed, might be fairly stated to be the broad issue between the Bill of his Honorable friend (Mr. Beadon) and the Bill of his Honorable friend the Member for Bengal. He (Mr. Laing) thought it was impossible to over-estimate the importance of such an issue. It was an issue on which not only a large amount of English Capital in India depended, but also one which was intimately connected with the promotion of morality and civilization among a vast agricultural population. He thought there could be no better system of legislation than that which encouraged honesty and discouraged fraud. That had been tried in England on a very large scale. Owing to a spurious sentimentality which had influenced legislation in favor of lessening the punishment on dishonest debtors, fraud had grown up to such an extent, that a universal cry had been raised for such a revision of the Bankruptcy law as should render the temptation to fraud less powerful than it now was among the class of petty traders and dealers. The necessity for such a revision was admitted in all quarters, and formed a prominent topic in the Queen's speech delivered in the Session which had just commenced, and there was no doubt that the measure of the Government would soon be passed into law. He thought that the same principle would apply still more strongly to India. As the law now stood, there was great temptation to a vast mass of the agricultural population to commit fraud. The nature of transactions in many staples of agricultural produce was such that a European Planter was obliged to resort to a system of advances. That was the case with regard to Indigo as well as to other produce. If European capital was to be introduced into India, the speculator must be prepared in many cases to make advances, otherwise he might stay away from India altogether. Well, the system of advances being admitted, what was the position in which the Honorable Member for Bengal wished to leave it? The Honorable Member had proposed to give the Planter the

remedy of instituting 10,000 or 20,000 Chancery suits, and had then quoted a number of cases to show that the construction in cases of enforcing specific performance, was so very doubtful, that no one could possibly say how any one of their suits might be decided. He (Mr. Laing) thought that the Honorable Member had put himself out of Court by the very cases he had read, for, according to those cases, it seemed doubtful whether an injunction for a specific performance would issue at all from a Court of Equity, and thus a Chancery suit might after all prove a remedy as inapplicable in law as it was nugatory in practice. He called it a barren remedy, because it was impossible to suppose that it was any real remedy to tell the Planter to bring a suit for specific performance on a point of mere legal construction against each of 10,000 ryots on contracts for the delivery of five or ten Rupees worth of Cotton or Indigo. Why, if he obtained an injunction at a cost ten times greater than the sum to be recovered, the defendant would be in the jungle, and his cattle across the border. Fancy an energetic Manchester man coming out to try whether India could not make us independent of the United States for Cotton, and going up to a Cotton District. He made his advances, and when he expected to receive his Cotton, was told that the ryots preferred to grow rice instead, but there were Courts of law and plenty of Lawyers, and if he liked to file 10,000 Civil suits and carry them through two or three appeals, perhaps, if he was lucky, he might get decrees for specific performance. The result would be that he would pack up his portmanteau and leave for England by the first steamer. It was a most serious thing for India to lose the benefit of an influx of European capital and enterprize. Why had we expended so many millions on Railways, if it were not in the hope of encouraging an influx of European capital? He firmly believed that the residence of European Planters in the Mofussil was, on the whole, beneficial to the country and to the ryots among whom they lived, and he was glad to think that the question now stood on a footing which removed all doubt as to the result. He was happy to think that the old system of Indigo contracts was at an end, and that the question of enforcing contracts could now be considered on general grounds apart from past topics of irritation. This Bill was not intended to have retrospective effect; and supposing a man with his eyes open chose to enter into a contract, what had he to complain of in the present Bill? Why, he had a simple mode of keeping out of the reach of its provisions, and that was to be honest. Let him faithfully carry out the obligations which he had contracted, and he had nothing to fear. He (Mr. Laing) would say that that was infinitely better for the man himself than that he should be placed in a position where, if his inclination or caprice pulled counter to his duty, he knew that there was no practical remedy to hold him to his contract.

If those Reverend gentlemen, who had signed the Petition we had heard read this morning, were present, he would ask them whether the Bill we were now proposing to introduce was not the best auxiliary to their efforts to improve the morality of the people which they had so much at heart. It was essential that laws should not be too lax, or procedure too remote and difficult in cases of this sort, which affected the character of great masses of the population. He thought it unnecessary to pursue the subject farther, because it had been narrowed to the distinct and broad issue, whether fraudulent breach of contract should be punished Civilly or Criminally.

As to the details of the Bill, as his Honorable friend (Mr. Beadon) had proposed to refer it to a Select Committee previously to publication, he would only say that he concurred in the omission of the 8th Clause, so as to remove all interference on the part of the Executive Government with a law which he believed to be applicable to the whole of India. He thought also, that the question as to the limitation of fifty Rupees should be carefully considered in Committee, but as regards the principle

of the Bill, it was one upon which the Government would take their stand and listen to no compromise.

Sir CHARLES JACKSON said, he had felt some difficulty in making up his mind on the present Bill, looking at it in one aspect, that is, assuming that the ryotty cultivation of Indigo was voluntary. His embarrassment arose from no inherent difficulty in the subject itself, but from the fact that they had been told that this Bill was brought forward at the instigation of the Planters themselves. Now assuming that the ryotty Indigo cultivation was a voluntary one, he was very much surprised that a body of men, so able and intelligent, and so acquainted with their own interests as the Indigo Planters, should propose a measure, which must, in the end, deal a death-blow to all ryotty cultivation. Either the Planter wanted the ryot to take advances, or he did not. If he wanted him to take advances, it appeared to him (Sir Charles Jackson) that it was the very wildest expedient to tempt the ryot by threatening him with a Criminal Penalty for the breach of his contract. There were plenty of persons in the Mofussil who would tell the ryots, even if these ryots were not now sufficiently able to advise themselves, "all you have to do, to keep out of prison, is not to take advances;" and what would be the consequence? All would refuse to take advances. He (Sir Charles Jackson) happened to know that under Act XIII of 1859 (which had, he supposed, been extended to the Neilgherries), not a single artizan or workman could be found to take an advance, so as to render themselves liable under that Act. For these reasons, it appeared to him that, if the ryotty cultivation was a voluntary one, the Bill would be of no assistance to the Planter. But that was not all. It would involve much more serious consequences, nay, strike at the root of all ryotty cultivation. He thought that was to be deprecated, for there was nothing whatever to condemn in the ryotty cultivation in itself, if the ryot cultivated voluntarily and was paid his price, and he (Sir Charles Jackson), for one, should be sorry to see it put a stop to if it could be so carried on.

But there was another aspect of the case, which was this. Suppose the Indigo cultivation was not voluntary, and that, as was asserted by some, Planters purchased Zemindary and Putneedary interests to obtain an influence over the ryots, and so compel them to take advances, in short, to put a screw upon their ryots. Whether that was so or not, he was not prepared to say; but he had a right to assume it by way of argument, and so put this Bill on the other horn of the dilemma, for if this be so, if the cultivation of Indigo be unprofitable to the ryot and not voluntarily entered into by him, then the effect of this Bill would be to perpetuate the present unhappy state of things, and it would also perpetuate a most rotten and vicious system. What did this Bill propose to do? Was there no means of reconciling Planter and Ryot? Was there no other balm in Gilead for the present state of things than this penal enactment? Look at the first Section. It provided:—

> "When any ryot, laborer, or other person shall have received from any manufacturer, master, or employer, carrying on business, or from any agent of such manufacturer, master, or employer, an advance of money on account of the cultivation, production, gathering, provision, manufacture, carriage, or delivery of agricultural produce, &c."

That provision was apparently founded upon an Indigo contract, which provided for everything. According to an Indigo contract—and he (Sir Charles Jackson) happened to hold one in his hand at this moment—a ryot was required to cultivate, gather, carry, and deliver. He was also required to measure, which was not however mentioned in the Act. Now there would not be a single breach of this contract. The breach was not that, if he did not deliver at the end of the year, he should be criminally prosecuted. If that had been the provision, there might be some analogy in this to the English law which rendered a husbandry laborer, or an artizan who took home materials

for the performance of a particular work, liable to be criminally punished for a breach of his engagement. But in this case, a ryot might be harassed throughout the whole cultivation with constant charges of breaches of contract. If a ryot were required to do a certain work, say, for instance, weeding, on a certain day, being engaged in his rice fields, and refused to do it on that day, he might be taken before a Magistrate's Court, merely upon that ground, for Indigo was a precarious cultivation, and the consequence of a delay in weeding might be ruinous. Again, it might be very important that the sowing should take place at a particular time, and he believed it was best done after rain, and the ryot might be called on to sow at once when it was inconvenient to him, and then if he was led to delay his sowing till the fall of another shower, he might be dragged before the Magistrate for a breach of his contract to cultivate. It might happen also that, owing to inundation, the ryot might be called on to cut the plant immediately the waters subsided, for he believed, that if that was not done immediately, the leaf turned yellow. The ryot might be called on to cut it at once, and if the Indigo cultivation was voluntary and profitable to him, he probably would do so, but if not, he probably would prefer to look after his own crops in the first instance, and the Indigo after that, and really considering that the call upon him was the result, not of his negligence, but of a mere visitation of Providence, his conduct would not be surprising, and he did not think the ryot should be subjected to a criminal charge for a breach of this kind. Then again look at the inequality of the punishment which the Bill provided for the several parties. While the ryot would be mulcted four times the amount of damages, or imprisoned for three months with hard labor, the other party might have recourse to perjury and subornation of perjury, and yet only be called on to make a compensation to the ryot. He firmly believed that this Act would be irritating to the ryot in the last degree, inasmuch as it sanctioned a constant supervision and interference with him. He believed the Act would aggravate the present unhappy state of things a thousand fold, and that it would so work as to aggravate the present discontent into more active resistance.

Then we come to the consideration of what were the grounds on which this measure was based. The grounds had been stated by the Honorable Member of Government who spoke last (Mr. Laing.) The only argument in its favor, or rather the only plausible ground put forward, was that the Bill merely proposed to affect small contracts under fifty Rupees, and that when a large number of these men struck work, it would be impossible to expect the Indigo Planter to drag so many as 500 or 1,000 ryots before a Court of Civil Judicature. To his mind, however, this argument was met by a very short answer. Pay the ryot a remunerative price; make it his interest to cultivate. If the ryot were paid a remunerative price for his crop, you would not want to drag 500 or 1,000 ryots before a Court of Justice. You might have to enforce an occasional contract now and then, and it might be that for the act of God, or the death of the parties, some contracts would be incapable of execution, in which case this Bill would not prove any relief to the Planter, for it applied only to fraudulent breaches of contract. But with those exceptions, he felt satisfied that if the ryot was paid a remunerative price, there would be no general complaint of breaches of contract, and he believed this answer exposed the fallacy on which the whole case for the Bill rested. Then again, before we were called on to pass this Act, it ought at least to be shown that it was impossible to provide an adequate Civil remedy, or that a Civil remedy had been tried and failed. He thought the Small Cause Court Bill which had been introduced to-day, was a move in the right direction, and he hoped that it would be sufficient. But if the ryot got a fair price, the Civil Courts would have little to do, for he repeated, and it was the argument he relied on, that if

Sir Charles Jackson

you gave a man a remunerative price for his labor, you would be generally sure of securing it.

Then there was another point on which the case for this Bill was rested. It was said that according to the English Act, an artizan or a laborer was under similar circumstances liable to be punished criminally. But he was in a very different position from a ryot in this country. In England, a husbandry servant, or an artizan, under certain circumstances, if he refused to perform the work, for which he received materials, was liable to criminal punishment. But he would ask upon what principle were these classes liable to criminal punishment? Upon this broad principle, that there was no other remedy but the person of the laborer or artizan. He (Sir Charles Jackson) would say that a ryot was neither a laborer nor an artizan, and it was a mere perversion of terms to say that he was so. He (Sir Charles Jackson) would not say that he was a Capitalist. What he meant to say was that a ryot was not a laborer. He did not work for wages, and the advance he received was often not enough to keep him a couple of months. The ryot to whom advances were made was a man possessing a few beegas more or less of land; he had also his homestead, his bullocks, and his plough; and it was a mere farce to say he was a laborer. According to the common acceptation of that term, a cooly was a laborer. Was it to be supposed that a Planter would trust a cooly with a piece of cloth round his waist with an advance. That a ryot was not a beggar or a person from whom you could not recover property, he (Sir Charles Jackson) could satisfactorily show from the result of the Act passed last year. He (Sir Charles Jackson) was not present in the Council at the time that Act was passed, as he was then presiding at the Criminal Sessions. It appeared from papers he had seen, and from which he had made an extract, that in Jessore 6,200 Rupees was decreed against 157 ryots, and about forty Rupees a head was recovered; while in Kishnaghur the sum decreed was 60,000 Rupees against 550 ryots, and the recoveries under these judgments averaged about fifty Rupees a head. It was therefore quite preposterous to say that the ryots were mere coolies, or had nothing but the clothes on their person. They were persons who contracted with the Planter, and, as such, would not be liable to such Acts as these in England.

There were some other grave points in the Bill on which he intended to have remarked; but as they were rather matters of detail than of principle, he would not enter upon them now. But there was one matter on which he wished to say a few words, and that was with regard to the Proclamation of the Government issued in September last, which had been referred to by the Honorable Mover of the Bill, and was also referred to in the Petition of the British Indian Association which had been read at the table to-day. The Proclamation was as follows:—

"It is not the intention of the Government of India to re-enact the temporary law for the summary enforcement of Indigo contracts by the Magistrate, which law will expire on the 4th October next, corresponding with the 19th of Assin. After that date actions for breach of existing contracts will be cognizable as before by the Civil Courts, but it is the intention of the Government to provide as soon as possible for the more speedy adjudication of such cases, by increasing the number of Courts, and by simplifying Procedure."

There was nothing in that Proclamation to which any one could object. It was a wise and proper proclamation. But could any body doubt, after reading it, that Government had abandoned the system of criminal prosecution against these parties? or could any one suppose, as had been suggested, that the Proclamation referred only to existing contracts? Existing contracts were referred to merely to show that now even they were to be cognizable in Civil Courts; and he felt satisfied that no one could read that Proclamation in any other sense than that for the future these subjects should be left for the decision of the Civil Courts. He did not wish to throw this out in a spirit of personal opposition to the

Government. He did not wish to say or insinuate that the Government were guilty of a breach of faith. He knew they were all incapable of such a thing. But this he must say that he thought it was a most lamentable thing that the Government of this country should have one policy in September, and another in March.

These were the only observations he had to make in reference to this Bill. If the ryotty cultivation of Indigo be a voluntary cultivation, it would be quite ruined by this Bill, whilst, on the other hand, if it were forced upon the ryot, the Bill would merely secure a continuance of the present unhappy state of things. He was sure that, if the Bill were passed, they would sow, not Indigo, but distrust and discontent, and that they would reap a rich harvest of discord and resistance.

MR. ERSKINE said, he was unwilling either to detain the Council long, after so full a discussion of this question by others, or to give a merely silent vote on a Bill of so much importance. Indeed after the statement that had just been made by the Honorable Member in charge of the Bill, it would be premature, he thought, to criticise the detailed provisions of a draft which must now be regarded rather as a mere project of law, to be elaborated hereafter into a more satisfactory enactment. Nor did he wish to trouble the Council with his opinion as to the suitableness of this Bill for the Indigo Districts of Bengal. He had no experience of these Districts, and on that subject other Members of the Council were much more competent to speak. But he would remind the Council that this Bill was also a general Bill; and the few remarks he had to offer, would refer to the general principle involved in the Bill, and to the course now to be pursued in connection with it. As to the principle on which the Bill was framed, he must confess that, in spite of all that had been said by his Honorable and learned friend (Sir Charles Jackson) and by his Honorable friend near him (Mr. Sconce), it did not appear to him that it was at variance with any principle of justice or with the principle on which the corresponding Chapter of the Penal Code was based, or with the principle enunciated by the Law Commissioners themselves, as the general rule for guidance in legislating on questions of this kind. In their Note on the Chapter relative to Criminal breach of contracts of service in the Penal Code, the Law Commissioners, after observing that "in *general* a *mere* breach of contract ought not to be an offence,"—a position which few persons, he thought, would deny—proceeded to state :—

> "To this general rule, there are, however, some exceptions. Some breaches of contract are very likely to cause evil, such as no damages, or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for Penal legislation."

This seemed to him to be a rational and a clear rule—and he did not see why it should be departed from. In applying the rule practically to different cases or classes of cases, difference of opinion would, no doubt, arise —as, for instance, whether contracts with agriculturists should be brought under the rule as well as contracts with artizans. But the proper solution of such a doubt as this, was to be found surely in a reference to the actual state of the agricultural population in different parts of the country. For himself, he had no difficulty in believing that in very many Districts in India the state of that population was unfortunately such—owing to improvidence, owing to the pressure of debt, owing to many adverse circumstances operating through a long course of years—that persons entering largely into contracts with such agriculturists, ought to enjoy all the same safeguards, all the same securities against fraud—neither more nor less than if their contracts had been made with artizans. For these reasons he did not object to the principle involved in the Bill. He saw no reason why an attempt should not be made to give practical effect to it by a suitable law. When, however, he turned from the question of justice to consider the prudence, the policy of introducing

at this time a Bill of this kind for the whole of India; and to consider the shape which such a Bill should assume—the difficulty of arriving at sound conclusions seemed to be much greater. In many respects he thought they were still a good deal in the dark. They were not told that the other Governments had been consulted on the question, or what opinions they had expressed. As regards the greater portion of India, no information had been placed before them. And certainly in connection with such an extensive question as this, no one could be expected to offer here an extemporaneous opinion which would be much worth having, or would be equally applicable to the state of affairs in all parts of India. Had it not been therefore for the statement made that morning by the Honorable Member in charge of the Bill, he should hardly have known how to acquiesce in this Motion. The proposal now contemplated, however, as he understood it, would allow to the Bombay Government, for instance, full time to express its own opinion on this subject, before the discussion should be renewed; and would leave any Honorable Member free to reconsider all the details of the Bill, even if it were now read a second time,—pledging no one to more than the soundness of the principle of the Bill, to which he had already referred. And therefore, as he did not object to that principle, he had no intention of opposing the Motion of the Honorable Member.

Mr. HARINGTON said, the speeches which they had heard from Honorable Members who had already spoken on the Motion before the Council, showed the importance of the question which they were then discussing. He believed he might truly say that no more important, no more difficult Bill had ever been submitted for the consideration of the Council than the Bill which they were now asked to read a second time. The principle involved in that Bill was a most important one;—the interests likely to be affected by the Bill were of considerable magnitude, reaching far beyond the classes of persons immediately concerned, and whether they looked at the Indigo Planter on the one hand, or at the cultivator of Indigo on the other, they could not but feel that any Bill, passed by them now, which should injuriously affect one of those classes, would not leave the other class altogether unscathed. In the remark which he had just made, he had mentioned only two classes as specially interested in this Bill, namely, the Indigo Planter and the Indigo ryot, because, disguise it as they might, call the Bill by whatever title they pleased, it must be patent to every one, that the Bill had been introduced solely on account of a particular trade, that was, the trade in Indigo. In order that this fact might not be brought out too prominently, and to save appearances at least, they might clothe the Bill in a garment of divers colors, but still the Indigo Planter would feel that this Bill was brought in for his protection alone; the Indigo ryot would feel that the Bill was directed solely against the class to which he belonged. He thought the Bill would be extremely unpopular with the latter class, and it behoved those, in whose interests the Bill was introduced, to consider whether the additional hostility to them which the Bill was sure to engender, would not in its effects more than counterbalance any advantages which they might hope to derive from the operation of the Bill. The Honorable Member of Council in the remarks with which he prefaced his Motion for the first reading of the Bill, observed that

"it might be said with some show of reason, that such a law as that now proposed, would be unfair, if it were to apply only to Indigo. But this was not the case;"

and a little farther on, he proceeded to say that

"it was not intended to confine the action of the Bill to contracts for the delivery of Indigo; that the Bill had been framed so as to embrace all kinds of agricultural produce, and its provisions were equally applicable to tea, sugar, coffee, cotton, and other valuable staples."

Now, he (Mr. Harington) would ask what evidence had the Council

before it that all or any of these staples required the protection of this Bill, or that they would in any way be benefited by the passing of this Bill. He submitted that no such evidence was to be found in the remarks to which he had just referred, or in the Statement of objects and reasons circulated with the Bill. No doubt some letters from the Managing Partner of a Sugar Concern in the Madras Presidency had been printed amongst the annexures to the Bill, but the writer of these letters had given the particulars of only a single case, in which he charged an attempt at fraud against certain persons, who, after taking advances from the concern managed by him, to plant sugar-cane, tried to dispose of the produce to another party. The decision of the Sudder Adawlut at Madras, reversing the conviction of the Court below, had not been communicated to the Council, and the case had been laid before them altogether in an *ex parte* form. From the papers before the Council, it was not possible to form an opinion, whether this particular case would be met by the Bill of the Honorable Member. Then it was worthy of remark that the Resolution come to on the complaint of Mr. Boothby by the Government of Madras, to which the particulars of the case must have been fully known, declared that that Government was not prepared to recommend to this Council the extension to contracts, such as those described by Mr. Boothby, of Act XIII of 1859, upon the model and in accordance with the principle of which, they were informed, the Bill before the Council had been framed. Another noticeable circumstance in the correspondence which had come up from Madras, was that at the date of Mr. Boothby's complaint to the Madras Government, the new Code of Civil Procedure had not been extended to the part of the country, in which the Aska Sugar Concern was situated. The Collector and Magistrate of Ganjam, writing to the Government of Madras, under date the 20th April last, noticed this fact, and added

> "that cases of the nature described by Mr. Boothby, might probably be often disposed of at a first hearing under the new Code, and that a little experience of its working would, perhaps, discourage the present system of fraud, which was as demoralizing to the ryots, as it was vexatious and injurious to merchants."

It would thus be seen that, at the period referred to in Mr. Boothby's complaint, the effects of the new Code in shortening procedure and in accelerating the decision of Civil suits had not been tried in the Province of Ganjam, and it was impossible, therefore, to judge how far Act VIII of 1859 would provide a remedy for the evils complained of by Mr. Boothby. For aught they knew to the contrary, it might put a stop to those evils altogether. Another most important law which had been passed by this Council since the dates of Mr. Boothby's letters to the Madras Government, had been alluded to by the Honorable Member for Bengal. He referred, of course, to the Indian Penal Code. He begged Honorable Members to compare the offences described by Mr. Boothby in the 4th paragraph of his letter to the Government of Madras, dated the 13th April last, as the offences of which he stated he stood in fear, with the offence defined in Section 415 of the Indian Penal Code, and then to say, whether they considered any fresh Criminal legislation necessary to meet offences, such as those mentioned in Mr. Boothby's letters. It appeared to him (Mr. Harington) that the Section of the Penal Code which he had quoted, must have been framed with special reference to cases such as those described by Mr. Boothby, the money having been taken, according to his statement, under false pretences. And here he would venture to ask the Honorable Member of Council who was in charge of the present Bill, whether after what had been said by the able men who framed the Indian Penal Code in their remarks on the Chapter from which the Honorable Member for Bombay had read an extract, where

they declared their agreement with the great body of jurists in thinking that, in general, a mere breach of contract ought not to be an offence, but only to be the subject of a Civil action, and looking to the fact, that only a few weeks ago this Council had, after full deliberation, resolved not to extend the Chapter upon which those remarks were made—he was alluding to the Chapter on the Criminal breach of contracts of service—beyond the very few and entirely exceptional cases selected by the framers of the Code, notwithstanding that, at the time the Council passed the Code, they had before them the able and elaborate report of the Indigo Commission, and were fully informed of all that was going on in the Indigo Districts in Bengal, he said he would venture to ask the Honorable Member of Council, whether looking to these circumstances, he would have brought in this Bill, had it not been for the unhappy differences which had arisen between the Indigo Planters and the cultivators of Indigo in the Districts just referred to. But for those differences he (Mr. Harington) felt sure that neither the Honorable Member of Council nor any other Honorable Member would have brought in such a Bill as this at the present time in respect to Indigo alone, much less a Bill which should extend to contracts for every other description of agricultural produce. He must repeat what he had said before, that they had no evidence before them to show the necessity of such a law for other descriptions of agricultural produce, or that any other kind of agricultural produce would be benefited by the passing of this Bill. If the manufacture of Indigo really required the protection of this Bill, and if there was nothing unobjectionable in the character of the Bill, let the Bill be passed, but let it be called by its right name. In the years 1823, 1830, and 1836, the Legislature of this country was not afraid, and did not think it wrong to pass a special law for the enforcement of Indigo contracts alone. Why, assuming its necessity, should they be afraid to pass such a law now? If a special law was required for Indigo, let a special law be passed. Why, he asked, should they pass a general law, which was not required, merely in order that they might meet a particular case or state of things? With the permission of the Council, he would read what was said by the Indigo Commission in the very able Report to which he had already referred, in deprecation of the passing of any general law for the enforcement of Civil contracts. He thought that this part of the Commissioner's report furnished a full and satisfactory answer to some remarks which had fallen from the Honorable Member of Council opposite (Mr. Laing.) The Honorable Member of Council seemed to think that fraud entered into all contracts to which the Natives of India were a party, and that unless a law of this kind was passed to punish fraudulent contractors, the people of Manchester would be deterred from coming out to India to engage in cotton and other speculations. He (Mr. Harington) thought that what he was about to read, would show the Honorable Member of Council that there were no grounds for his apprehensions. The opinions of the Indigo Commissioners, it must be remembered, were formed after taking an immense quantity of evidence. They said:—

"It is not proved to us, that in other and similar transactions the native of Bengal is more than usually dishonest. Large advances are made for silk, hides, and jute; much money, or the equivalent of money, is advanced in the way of loans on the security of the crop; for this we hold to be the real nature of the transaction between mahajun and ryot, and we are not aware of dealers complaining generally of the dishonesty of the contracting parties, or claiming that some special law should be enacted in their favor. On the contrary, several witnesses, Mr. Morrell, Mr. S. Hill, Mr. Eden, Baboo Joykissen Mookerjee, and Mr. A. Forbes, have mentioned facts, or given evidence, which prove fair dealing on the part of ryots and other classes of natives, in matters profitable to them. One inference which we draw from this is that the sale of hides and the raising of jute and ordinary rice crops are profitable to the parties who supply these articles, and as to the ordinary mahajani dealings, it suits the ryots to borrow money or grain, to eat at a season of the year when the market is tight, and to repay the loan after the gathering in of the harvest. It is true that on behalf of the Planters it is denied that they

demand special legislation, these gentlemen holding that all evasions or breaches of contract of whatever kind, should be punished as misdemeanors, as only fair to all Commercial enterprise. In this we think that such arguments are merely pushed to their utmost logical consequence and conclusion. The position being taken up that Indigo requires protection, it is natural to add that not only Indigo, but every kind of Mercantile speculation is liable to the same fluctuations, is exposed to the same chances of fraud and dishonesty, and naturally demands the same prompt remedy.

Now, as it is an undeniable fact that a vast deal of money changes hands annually in the course of transactions with regard to the country produce; and as the parties mainly interested are, as far as we know, not anxious for any special law, or ever complain that the Courts, should they have occasion to resort there, do not give adequate protection, we cannot think that, for the sake of apparent logical consistency, it would be expedient to demand from the Legislature a summary remedy to be applied to all mercantile transactions, where money is advanced by one party for the purchase of produce. The claims of the Indigo Planters, if any, are special, and must be considered as such."

He trusted it was unnecessary for him to disclaim in the remarks which he had made, or which he was about to make, any thing approaching to a feeling of hostility to the Indigo Planters. He was quite insensible of any such feeling. If he might be permitted to say so, his feeling towards the Indigo Planters was one of the utmost friendliness. He heartily endorsed all that had been said by the Honorable Member of Council opposite (Mr. Laing) and by the Indigo Commission in their report, as to the advantages that resulted from the residence of Indigo Planters in the interior of the country, where, to quote the words of a late able State paper, "they were a source of strength to British rule and of usefulness to India." No one could regret more than he did the unfortunate position in which the Indigo Planters were placed at the present time. No one more sincerely sympathized with them than he did. No one would more readily lend them a helping hand in every proper way. He looked upon what was now going on in some of the Indigo Districts as a national misfortune, and rejoiced, indeed, should he be if some suitable remedy could be devised, which should have the effect of reviving the old relationships between the Indigo Planter and the Indigo ryot; which should bring back the kindly feelings which formerly existed between them, when the ryot looked up to the Planter as a superior Being and loved, respected, and esteemed him; and which should place this important branch of our trade, in which more European capital, skill, and labor had been embarked than in any other branch of our Indian trade, on a healthy and satisfactory footing. But he was unable to regard this Bill as any remedy for what was now amiss. Not only would it prove quite ineffectual as a remedy, but he agreed with the Honorable and learned Judge opposite (Sir Charles Jackson) that it was more likely to aggravate than mitigate the existing evils. What seemed to him to be required was some measure which should bring about an entire reconciliation between the Indigo Planter and the Indigo ryot. Was there any thing he would ask of a conciliatory character in this Bill? Would this Bill bridge over or fill up the gulph which separated the two classes? Would this Bill lead to an extension of the cultivation of Indigo to which the Indigo Planter must look to retrieve his fortunes? It was no easy matter to say what should be done; but on this point he was clear, that the remedy did not lie in fresh legislation; certainly not in the Bill which was now proposed for their adoption. The Honorable Member of Council in his introductory remarks said—

"As to the Bill being injurious to employers, he thought it must be admitted that employers were the best judges of what would conduce to their interests. A general desire had been expressed for such a law."

But where, he would ask, had this general desire been expressed? Had the present Bill been welcomed by the Planter? Had it been received with any thing like enthusiasm? Had any public meeting been held in support of it? Calcutta could hold public meetings about matters in which it was interested, and it could speak out at such

meetings. Had any Petition been presented to the Council in support of this Bill by the Indigo Planters' Association? No doubt that Association had petitioned the Council on Saturday last regarding the Bill; but was there a word of commendation or approval of the Bill in their Petition. They said they would not have had reason to object to the general provisions of the Bill, as far as regarded Indigo planting, had it become law in October last, when Act XI of 1860 expired, but having been brought in only now it would in its present shape cause serious loss and hardship to the Petitioners; and they then went on to propose certain modifications of the Bill, which, if adopted, would render the Bill, to quote the words of the Honorable Member in charge of the Bill, an unjust Bill. Interested parties were not always the fittest judges of what was best for their own interests. Their minds were apt to become biased. Their feelings sometimes got the better of their judgment. Last year, when the temporary Act was under the consideration of the Council, he ventured to suggest that if fresh legislation was necessary, it should take a different form from that recommended for their adoption. He also expressed a doubt whether the proposed Act would prove as beneficial to the Planters as the laws they already possessed. He would now read to the Council what the Indigo Commission had said in respect of the working of last year's Act, and of the effects produced by it. They said:

"Also when we consider the working of the law for breach of contract, passed in the spring of this year, we are unable to pronounce it at all satisfactory. Unless we are greatly misinformed, the hope and intention of the Legislature was that the law would act as an inducement to the ryot to sow as in former years, and that its stringent provisions would be rarely put in force. But the result, unhappily, has not borne out these expectations. In one district the ryots have been induced to sow, as we gather from official papers duly placed before us, by the management and decided course adopted by the local authorities in aid of the summary law. But in another, ryots have preferred distraint and apparent ruin, and even the jail, to a continuation of their cultivation. It is true that many of these unfortunate persons, through wilfulness or carelessness, have mistaken the object of the Act, have imagined that it was a mere threat, or that, instead of the suits turning on the point of cash advances, given and received, there would be a regular adjustment of past accounts on both sides, by which they would be entitled to receive money instead of being found in debt to the factory. But the results, however caused, are such as make us shrink from recommending any continuance of the summary law, in its present or even in an amended form. There is either reluctance, or the most clear and avowed dislike to Indigo; the operation of the law has inflicted heavy loss on scores of families; those who have suffered its operations, and those who have not, have in language not to be mistaken, declared before us their unalterable determination not to sow any more. And we have felt it our duty to point out, in the system of planting, sundry defects which must be removed before we can pronounce that both parties stand even on an equal footing. Besides, even if we were disposed to recommend a summary law, we should think it necessary to point out that such a measure, this year, might really be prejudicial to the very interests which it was intended to serve. No such summary law, we should suppose, could be made to apply to the advances of past years. It would apply to advances to be taken in future, and it would, no doubt, be thought proper clearly to explain to all ryots the penal consequences of taking advances, and not fulfilling a contract. Now if this were done, as we suppose it would be, and the ryots were told that imprisonment in the Criminal jail would be likely to follow any breach of engagement on their part, we are morally certain that from the temper of the ryots, few persons would be found to come forward and enter into such contracts at all. While matters are in this state of uncertainty and transition, and the minds of the agricultural population are under the influence of fear and discontent, or are completely unsettled, we cannot reconcile it to our consciences to recommend any special and summary legislation of any kind, so manifestly in favor of one party, as such a law would be, even though it were proposed to give security to ryots by making advances not recoverable under any contract of more than a year's duration, or unless the Planter sue within a twelve month; on the contrary, we object to any laws which fetter one party or the other, and we do not wish to see the period within which a person may sue for debts, damages, or breach of contract, reduced below that at which the late law of limitation has fixed it."

Surely, he was justified in saying that the Act of last year had not improved matters—that it had done harm rather than good.

He presumed that the Council would not agree to pass both the Bills now before it. For his own part, he thought it very doubtful whether the country required either of

those Bills; but if obliged to choose between them, he thought he should give the preference to the Bill of the Honorable Member for Bengal, which appeared to him to be based on sound principles. If they did not take care, the country would soon be suffering under an embarrassment of riches in the shape of laws for enforcing Indigo contracts. Before assenting to new laws, would it not be well for them to enquire what laws they had at present, and to consider whether the existing laws were not sufficient, or if any change was required, whether it would not be better to consolidate and amend the existing law, rather than have recourse to fresh legislation of a novel character, and declared to be opposed to the views of the great body of jurists. He would briefly refer to the laws now borne on the Statute Book relating to Indigo contracts, or which might be applied to the enforcement of such contracts. First, there was Regulation VI of 1823. Section 2 of that Regulation declared:

"If any person shall have given advances to a ryot or other cultivator of the soil under a written engagement, stipulating for the cultivation of Indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the Indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests, and for the due execution of the contract."

Was this law to be retained, if they passed the Bill now before them? There was no proposition to repeal it. He was told that this law had proved inoperative, and that it had not afforded to the Planter the protection which it was intended that he should derive from it. If this was really the case, why was it so? Was the law defective? He believed that the reason why this Regulation VI of 1823 was not made more use of was the failure of the Planters to take written engagements from the ryots in the terms of the Regulation. The law required that the engagement should indicate the specific land which the ryot agreed to cultivate with Indigo. What said the Report of the Indigo Commission on this point?

"The contract binds the ryot to give suitable lands, to plough, sow, and weed at the proper times, to see that the plant be not damaged by cattle, to cut it and, in some instances, to deliver it at the factory. Naturally it is, as regards the fulfilment of these contracts, so worded, that we have had the greatest complaints and the largest amount of conflicting evidence."

He would ask the Honorable Member of Council, who was in charge of this Bill, whether he intended the Criminal Courts to enforce the performance of vague contracts of this nature and, upon summary conviction, to visit a supposed violation of them with the penal consequences described in the Bill. The Bill contained no provision as to what the contract was to set forth, and so far as the Bill was concerned, the contracts, which the Criminal Courts might be called upon to enforce under it, might be as vague as those described by the Indigo Commission. If an express provision of law could be deliberately set aside as the Report of the Indigo Commission showed to have been the case in respect to Section 2 Regulation VI of 1823, what might they not expect when the law left everything vague as to what the contract was to contain. Was the Magistrate the proper authority to decide, and that too without an appeal, whether the land was suitable, which was a question of degree, or what were the proper times for ploughing, sowing, and weeding, the times being dependent, not altogether upon the will of the ryot, but as had been pointed out by the Honorable and learned Judge opposite (Sir Charles Jackson), upon the Heavens, or upon the weather, or the season. It certainly did appear to him (Mr. Harington) that these were questions for the decision of a Civil Court, not of a Magistrate, to be followed, it might be, with imprisonment in the Criminal Jail with labor. He hoped the Honorable Member of Council would excuse him for saying so, but it seemed to him that the Honorable Member could not have sufficiently considered the nice,

difficult, and complicated questions which would constantly arise in the cases which he proposed to commit to the final determination of a Magistrate.

The next law was Regulation V of 1830. But little of this law remained. There was, however, one Section of the Regulation which had been repealed, to which he wished to call the attention of the Council, because the Bill now before them must be regarded as a revival of this abrogated Statute, and he was rather surprised that it had not been noticed by the Honorable Member of Council in his opening remarks.

Section 3 Regulation V of 1830 enacted that :—

"All persons who may have received advances and have entered into written agreements for the cultivation of Indigo plant, in the manner indicated in Regulation VI of 1823, and who, without good and sufficient cause, shall wilfully neglect, or refuse to sow, or cultivate the ground, specified in such agreements, shall be deemed guilty of a misdemeanor, and on conviction, before a Magistrate or Joint Magistrate, shall be liable to a sentence of imprisonment not exceeding one month. The Magistrate or Joint Magistrate may likewise require the persons so convicted, to sow or cultivate the ground specified, if it shall appear just and proper to require the same ; and any subsequent convictions of wilful neglect or refusal to comply with such requisition, shall be punishable with a further sentence of imprisonment, not exceeding two months."

This law, after being in force for only five years, was repealed by Act XVI of 1835. The grounds of the repeal were not stated in the repealing Act, but he learned from the very able Minute of the Honorable the Lieutenant-Governor of Bengal on the Report of the Indigo Commission that the law treating one, and one only, of the two parties to a Civil contract as a Criminal, if he failed to fulfil it, was held by the Home Government to be manifestly unjust and oppressive, and contrary to all sound principles of legislation, and that it was ordered to be rescinded in consequence. He had not seen the correspondence which preceded the repeal of Section 3 Regulation V of 1830, or the Despatch of the Home Government, and he should be glad if these papers could be laid before the Council. [MR. BEADON—The papers are published in the Appendix to the Report of the Indigo Commission.] He (Mr. Harington) had not had time to read through the Appendix to the Report, nor indeed the whole of the evidence, and he was not aware that the papers referred to by him had been printed. He would take this opportunity of asking the Honorable Member of Council, whether any communication had been received from the Secretary of State for India, on the subject of the temporary Act of last year, and, if so, whether there would be any objection to laying a copy of any Despatch received on the table of the Council ? They were aware that the Secretary of State for India was in the habit of reviewing the Acts of this Council, and of making remarks upon them, which were communicated to the Government of India, and he did not suppose that so important an Act as the temporary Act of last year, could have passed without comment. They learned from the paragraph of the Minute of the Honorable the Lieutenant-Governor of Bengal which he had read, that the Penal law of 1830 was considered an unjust and oppressive law by the Home Authorities, because it was a one-sided law, and he would ask in what respect did the present Bill differ from that law ? The only difference he could see was that the present Bill was more severe in its provisions, and less precise in its requirements, as to what the written contracts should contain. What was unjust and oppressive in 1830, could not be otherwise in 1861, the circumstances remaining the same —and what reason had they to suppose that the authorities at home who had ordered the repeal of the law of 1830, because it was an unjust and oppressive law, and opposed to sound principles of legislation, would give their assent to the Bill under consideration, which presented precisely the same features as the repealed law ? The Honorable Member of Council on his left (Sir Bartle Frere), when the temporary Act of last year was under consideration, said that Honorable Members would cut off one of their hands rather than pass a one-sided law, or a law that did not afford

equal protection to the interests of the cultivator and the planter. But he would ask what protection did the present Bill afford to the Indigo ryot? He understood the Honorable Member of Council on his left, in what he said regarding the protection which the Bill of last year would afford to the interests of the ryots, to allude to the Commission then about to be assembled. Well, that Commission had sat—had made enquiries, and had sent in their Report, and what was the result? It had been stated by the Honorable Member of Council in charge of the present Bill, in the extract which he had read from the Minute of the Honorable the Lieutenant-Governor of Bengal already referred to—and he (Mr. Harington) did not understand the Honorable Member of Council to dissent from the conclusion arrived at by the Honorable the Lieutenant-Governor of Bengal on the evidence—the result was that the ryot was found guilty of nothing, and that his complaints were in the main fully established. The Honorable the Lieutenant-Governor of Bengal went on to observe, and he (Mr. Harington) entirely concurred with him, that

"It would be natural, upon such a finding, to discuss some project of a special law of protection in his favor; but to follow up a verdict in favor of a successful complainant by a sentence of subjection to a special Penal law, making him Criminally liable for what no other person is criminally liable, does seem to me to be somewhat hard upon him."

The other existing laws were Act X of 1836, the Section of the Indian Penal Code already quoted more than once, and the new Code of Civil Procedure; but as the Honorable Member for Bengal had fully shown the applicability of these laws in the case of Civil contracts, he (Mr. Harington) would not occupy the time of the Council by noticing them in detail, farther than to observe that the Illustration "G" to Section 415 of the Indian Penal Code, which had been read by the Honorable Member for Bengal, showed that the framers of the Code had not overlooked Indigo contracts. With this array of existing law, Civil and Criminal, for enforcing Civil contracts, whether relating to Indigo or any other agricultural produce, he (Mr. Harington) must say he could not consider any new law either necessary or desirable.

The Honorable Member of Council, in bringing in the present Bill, observed that the protection, which it was intended to afford to the parties in whose interest the Bill had been introduced, had long been enjoyed by masters against their servants; but he (Mr. Harington) believed he was right in saying that any Penal laws relating to masters and servants, which were to be found in the existing Regulations and Acts, would cease to be in force from the date on which the Indian Penal Code came into operation.

Act XIII of 1859 had been much dwelt upon by the Honorable Member of Council in charge of the present Bill, as affording a precedent for it, and as justifying its introduction. But he would ask, were the contracts to which that Act applied, at all similar in character to the Indigo Contracts, which would fall under the present Bill? Was there any parallelism between the artificers and workmen referred to in Act XIII of 1859, and the Indigo ryots who would be affected by the present Bill? The vast difference between the two classes would, he thought, be best shown by his reading to the Council what had been said by the Indigo Commission in their Report on the present state and condition of the Indigo ryot. [Mr. Harington here read parts of the following paragraphs of the Indigo Commissioners' Report, namely paragraphs 41, 42, 52, 61, 67, 70, and 109.]

Much stress had been laid by the Honorable Member of Council in charge of the Bill on the opinions expressed by the dissentient minority of the Commission. But what was stated in the passages of the Report which he had just read in support of the asserted fact that the Indigo ryot was not really a free agent, was not the statement of the majority of the Commission only. In paragraph 12 of

the separate Minute recorded by Mr. Temple, in which Mr. Fergusson had concurred, it was stated :—

"The local administration is however bound to protect both parties in the exercise of their legal rights ; the ryot therefore must be absolutely protected from force, unlawful coercion, or violence. Let all this freedom be secured from henceforth, let the cultivators of Indigo be really free agents ; and doubtless some good understanding will soon be arrived at, between Planter and ryot. But we deem it right to declare our apprehension that, unless some important concessions are at once made by the Planters to the ryots in several Districts, nothing short of actual force would induce the ryots to sow."

Then again in paragraph 31, Mr. Temple said :—

"If it be urged, in opposition to the enactment of such a law, that the crop is unremunerative to the ryot ; that the ryot is not practically free ; that force and violence are already used ; that the police are inefficient ; that the planter is already the stronger party ; then we would beg that the matters previously urged may be borne in mind ; and we submit that these objections, however applicable under the system heretofore existing, will not apply to that reformed system which we seek to introduce. If the improvements which we urge, shall be carried out, (and unless they are carried out, more or less, we fear that the very existence of Indigo cultivation at all will be jeopardized), then we submit the cultivation will be remunerative to the ryot, that the ryot will be a perfectly free agent ; that force and oppression will no longer be possible ; that the police will not be inefficient. And lastly, however powerful the planter may have heretofore been, yet he is not now the stronger party, as compared with the ryot. Indeed the ryots have shown themselves to be aware of their own rights and interests, and resolute in using their physical force and numerical strength in resistance to any thing like coercion."

The dissentient minority never proposed that a law such as that contained in the Bill before the Council should be passed until effectual measures had been taken for the protection of the Indigo ryot. Where were these measures ? He did not find them in the Bill before the Council. What the dissentient minority contemplated as a preliminary measure was that the whole system of Indigo cultivation, as between the Planter and the ryot, should undergo a complete reformation. Had this reformation even commenced ? He would ask with the Honorable and learned Judge opposite, what guarantee had they that it would ever take place, and until they had such guarantee how could they give their assent to the present Bill ? Furthermore the dissentient minority never proposed to make the breach of every contract punishable by the Magistrate, but only the breach of a registered contract. They considered registration an essential safeguard to the ryot, and he (Mr. Harington) entirely concurred with them. But this safeguard was to be dispensed with, not because it was not necessary, but because there would be some difficulty in providing it—and what did the Bill propose to substitute for registration ? why, merely that copies of all contracts should be filed in the Magistrate's Office within a month after they were executed. No provision was made for any notice being given to the ryot and, as had been pointed out in the petition which had been read to the Council to-day, so far as this Bill was concerned, no opportunity would be afforded to the ryot of knowing of the existence of the contract in his name, much less of disputing its authenticity. It might happen and, if what was said by the Honorable Member of Council in charge of the Bill as to the character of some of the Indigo contracts was true, it probably would happen that the first intimation the ryot got of the contract would be by means of a warrant of arrest issued against him for an alleged breach of the contract. He could not accept this provision as the equivalent of the safeguard recommended and made a condition of a Criminal law by the dissentient minority. In conclusion, he must say he concurred with the Honorable the Lieutenant-Governor of Bengal in thinking that no one-sided legislation was ever justifiable, and that such legislation generally injured the interest it was intended to serve. He had already expressed his belief that such would be the effect of the present Bill, if it passed into law. If asked, what he considered should be done, he would answer the question by

saying, do not pass this Bill. In the words of the Indigo Commissioners' Report,

"A really good system needs the support, neither of registration nor of summary and special laws and measures. Such measures do nothing more than prop up a bad system, or cloak its defects."

He must apologize for having occupied so much of the time of the Council, and he hoped that they would forgive him for having done so. He begged to thank them for the hearing they had accorded him.

SIR ROBERT NAPIER said, the arguments for and against this Bill had been so fully discussed that he would not detain the Council farther than to say that nothing that he had heard to-day had convinced him of any injustice in the principle of the Bill. It was clear to him that a fraudulent breaker of a contract ought to be promptly punished, and he had not so poor an opinion of the Magistracy of this country as to believe that an honest though unfortunate Contractor would be punished under the Bill. He (Sir Robert Napier) believed that the dishonest only would be punished, and therefore he should give the Bill his hearty support, trusting to the Committee to correct such details as required amendment.

SIR BARTLE FRERE said that, after what had fallen from his Honorable friend opposite (Mr. Laing) and his Honorable friend the Member for Bombay, in which he entirely concurred, he had little to say as to his own reasons for supporting the second reading of the Bill, but he must disclaim all intention of dealing with it as an Indigo Bill.

It had been said that there was no demand for the law in any other part of the country, or from any other branch of industry. But he knew that such a law had been long a *desideratum* in other parts of the country—in the Bombay Cotton Districts, for instance, where the want of summary means of enforcing petty contracts, for the delivery of cotton, was felt as a serious impediment by both Native and European Capitalists.

The peculiarities attaching to this class of contracts were, first, their *small amount*, and the petty character of the fraud whenever any fraud was committed. The produce was collected in very small quantities from a great number of producers; and the vast number of suits which must be instituted to obtain the enforcement of such contracts, was of itself sufficient to render the remedy by Civil suit inoperative. Then there was the element of *time*, it was essential in most of these contracts that they should be performed within a certain time; the produce must be cut, or picked, or delivered on a certain day, in order to be of any value to the receiver: if therefore the Civil Court only gave its decree when that time was passed, the decree was of little value; the delay had neutralized its effects. Then again there was the absence of *means*, whence payment of damages could be enforced. It was of little use to get the decree, unless the amount could be speedily levied. There had been much discussion as to whether the ryot was a laborer or a capitalist; he (Sir Bartle Frere) remembered that a witness examined on the Charter Act in 1833, described the ryot as a "landed proprietor living on, and cultivating his own estate." Now without entering on this question and admitting that the ryot was very often a substantial man with considerable property, it must be admitted that his property was very often intangible when the Sheriff went to execute a distress warrant. The ryot probably had a house, but it was generally shared by a dozen relations. He had perhaps a comfortable farm of a number of acres of well cultivated land, but there were a dozen perplexing shares and contingent rights of ownership, which made the land practically unsaleable. He had bullocks and farming stock, but it was next to impossible for any but a fellow villager to identify them, and altogether he might have ample means to satisfy a decree, and yet the Sheriff would find it impossible to get hold of

them. Now what was to be done in this case? Was the fraud to be practically unpunished, because from the small amount it cost more to recover than the sum at stake, or because the necessary process of adjudication in a Civil Court was so tardy, or because the party committing the fraud was able to conceal and make away with his property? Surely this was not a desirable state of things for any of the parties concerned. If the party committing the fraud could not or would not make pecuniary satisfaction, he ought to suffer in person. It seemed to him (Sir Bartle Frere) that two remedies should be open, the one through the Civil Court, the other through the Criminal, and it appeared to him that both Bills were needed. There could be no doubt that our legislation on both points had been very defective. The Bill of the Honorable Member for Bengal proposed to amend the Civil law; his Honorable friend's (Mr. Beadon's) the Criminal. The two Bills had been described as antagonistic; he could not regard them in that light, and hoped that both would pass. The principle of his Honorable friend's (Mr. Beadon's) Bill was not a new one, even in English law. Why in England were certain classes of servants, hackney coachmen, boatmen, petty artisans, and others, liable to prosecution before a Magistrate for breaches of contract, essentially similar to those which, among merchants, could only be dealt with by Civil action? The reason was not that the English law treated the poor man in one way, and the rich in another, but simply because, where the amount at stake was small, where there was no time for litigation, and where the party charged was not likely to have means of paying damages, a somewhat shorter, rougher, and readier means of deciding the case was provided through the Magistrate's Court, instead of referring the case to the Civil Judge. He could not think the Magistrates any way unfitted to try such cases, and if there was such a defect in the Criminal law, as he thought existed, he could find nothing in the proclamation of September, or in the circumstance of their having lately passed the Penal Code, to prevent their amending the Criminal Law. It had been said that there were no complaints, but this was not the case. The deputation of Indigo Planters, which lately waited upon Government, gave strong and convincing evidence on this point, and it was evident from what they said that the defect in the law was general and was not confined to Indigo. He thought that our Criminal legislation on this subject should be of a permanent and general character, like the other parts of the Penal Code. He would be glad to see both the Bill of the Honorable Member for Bengal and the Bill of his Honorable friend (Mr. Beadon) considered together; and if the Honorable Member for Bengal wished it, and the forms of the Council allowed, he (Sir Bartle Frere) would gladly support the Honorable Member in any Motion he might make for the purpose of placing both Bills before the same Select Committee.

THE VICE-PRESIDENT said that, if we were now considering whether this Bill should be passed in its present shape, he should certainly vote against it, because there were many of its details to which he objected. But the Honorable Mover had stated that it was not his intention to move for a suspension of the Standing Orders, with a view to passing the Bill through all its stages forthwith; but rather, after the Bill had passed its second reading, to refer it to a Select Committee with an instruction to submit a preliminary Report upon it previously to its publication. In case that course should be adopted, there were one or two points which he would suggest for the consideration of the Committee. He certainly agreed with the Honorable Mover of this Bill, that Section VIII should be omitted. He (the Vice-President) would make the Act general. Then it might be for consideration whether Act XIII of 1859 ought not also to be made applicable to the whole of India, and Artificers, Workmen, and Laborers receiving advances dealt with summarily throughout India. There was another objection of

a very serious nature, namely, whether a Planter who chose to adopt the remedy provided by this Bill should also have a Civil action: He objected to any person being allowed a double remedy in respect of the same matter, and thought that all parties should be obliged to choose between the two. This Bill empowered a Magistrate to order the party complained against to repay the amount advanced, and to award damages not exceeding four times the amount of the advance, which of course would be paid over to the complainant. Section II, however, contained a proviso,

"that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy by action, or otherwise, which he might have had but for this Act;"

and it was further provided that, in the event of non-payment, the Magistrate might order the party to be imprisoned with hard labor for a term of three months or until the money should be sooner repaid. He (the Vice-President) thought that a person who was imprisoned with hard labor for three months under this Act ought not to be liable to be imprisoned again under the process of a Court of Civil Judicature.

There were other points in the Bill which required amendment, but as they were mere matters of detail, he would not enter upon them at present.

The question for consideration now was, whether we should provide a new remedy for breaches of contract, or leave them to be dealt with under the ordinary law. The Honorable Member for Bengal had said that, by passing this Bill, we should be enacting one law for the rich and another for the poor, and the Honorable Member had gone into statistics to show that the ryot was not a laborer. Now we were not discussing the question whether the ryot was a capitalist, or a gentleman living on his own estate; but we were considering whether, in the case of contracts entered into for small sums, we should drive the parties into Civil Courts of Judicature, or give them summary redress. The Honorable Member for Bengal had said that there were 23,200 ryots employed by the Bengal Indigo Company, to whom, upon an average, advances to the amount of about 75,000 rupees were annually made, which would come to about three rupees each man; and he asked if that was sufficient for a ryot to live upon for a year? But he (the Vice-President) believed that in the contracts it was provided that the ryot should be paid at the end of the season at the rate of a rupee for so many bundles. But that was not now the question. The purpose of the Bill was simply to protect certain interests which would certainly be jeopardized, whether the amounts advanced were large or small, if summary redress were not given. He (the Vice-President) did not come to enter into the question whether this Bill was for the protection of Indigo Planters or any other interest. Had the Bill been brought in for the protection of Planters alone, he should have considered it his duty to give it his support. It had been said that such cases as breaches of contract should not be made the subject of Criminal prosecution, but should be left to be dealt with by the Civil Courts. It was very difficult however to draw the line where Criminal jurisdiction ended, and where Civil began; and what we had to consider was whether we might not be doing serious injury to a great interest, if we refused to provide summary redress for such breaches of contract. The Honorable Member for Bengal had said *de minimis non curat lex.* It would be *de minimis*, if we were considering the case of one ryot only. But we were considering the question as regards the protection of a large and important interest which was at stake. He would ask the Honorable Member, with reference to the 23,500 ryots who, he said, had received advances to the amount of about 75,000 rupees, what would be the consequence if these men were to be dragged before the Civil Courts, and in default of payment, cast into prison? According to the Code of Civil Procedure, the party

at whose suit the defaulter might be imprisoned, would be obliged to support him in idleness, paying for his subsistence four annas a day, or six annas a day in case of illness. What would be the effect? Why, the whole amount of advances, the 75,000 rupees, would probably be gone in four days. Besides it was not right that these parties should be imprisoned at the expense of the complainant, but their imprisonment ought to be free of expense to him. He (the Vice-President) thought that such small contractors, if imprisoned, should be kept at the expense of the Government; nor did he think it unreasonable that they should be kept to hard labor to defray the expenses of their keep instead of living like gentlemen in idleness on the Civil side of the jail. The Honorable Member for Bengal had cited two cases, that appeared to be complicated, determined, he (the Vice-President) thought, by Lord St. Leonards in the Court of Chancery, which did not seem to have any bearing upon the present question. Lord St. Leonards was reported to have said that he would not award specific performance, because the Court could not enforce it. Nor would the Magistrate do so. It did not require the learning of Lord St. Leonards to tell us this. The Bill merely authorized the Magistrate to award specific performance, if he could enforce his order. Section II provided that the Magistrate might order the person complained against, "*if it be possible*, to perform the contract, or get it performed according to the terms thereof." Were we to assume that a gentleman who held the high position of a Magistrate was unable to determine so simple a question, and that he would order a person to perform an impossible contract? He (the Vice-President) could hardly conceive that a Magistrate would be so incompetent as to do anything of the sort. It was provided by Section IV of the Bill, and very properly so, that, "if it shall appear to the Magistrate that the contract has been obtained by means of fraud, force, or intimidation, the complaint shall be dismissed." Now was not the Magistrate equally capable of trying that simple matter of fact as a moonsiff? It might be said that, if the moonsiff tried in the first instance, his decision was not final, and that an appeal would lie from his decision. But were parties in cases of such small amounts as three rupees to be allowed to have the right of appeal to the Zillah Judge? He (the Vice-President) thought that the Magistrate was quite as competent to determine cases of fraudulent contracts as the Zillah Judge. It did not require learning but experience to try these cases. It was not a question of law, but simply of fact, that would have to be tried. This Bill indeed made some kind of provision as to this important matter, which did not appear to him to be sufficient. Section VI provided that "the word 'contract' as used in this Act, shall extend to contracts and agreements in writing, duly witnessed and stamped, of which a copy shall have been deposited in the Magistrate's Office within one month from the date of execution." The depositing would no doubt be evidence, and very good evidence, that the complainant at the time of the deposit alleged this contract to have been subsisting. But it would not be evidence that the other party was not induced to enter into that contract by means of fraud, force, or intimidation, or that the other party knew of the contract being so deposited. Some better mode was therefore necessary, but as that was a matter of detail, he would leave it for consideration in Committee. If some provision were introduced, requiring a certificate from the Magistrate that the persons who were alleged to have entered into a contract deposited in his Office had appeared before him, it would be hardly possible to have better evidence. Even in such a case, it might happen that a person might appear before the Magistrate by means of fraud, force, or intimidation practised upon him, but that could not be avoided under any circumstances. The Civil Court might be deceived in a case of this kind. But the Civil Court would endeavor to

guard against it, and so would the Magistrate who would be equally competent. Some provision might be made, requiring that a Deputy Magistrate should be deputed for the duty, before whom the contracting ryots should appear, whose duty it should be to see that the contract was duly stamped and sealed, and who should satisfy himself that the persons entering into the contract were free agents. He (the Vice-President) did not propose at present to enter into the details of that matter. He merely threw this out as a suggestion for the consideration of the Honorable Members to whom the Bill should be referred.

The Bill then provided that no complaint should be received under the Act for the breach of any contract made for a longer term than one year. He thought that it would be sufficient to provide that no contract should be enforced under the Act, except within a year from the date of its execution. If the parties chose to enter into contracts for three years, or for five years, he saw no objection to their doing so; but he would leave the party complaining, if he allowed the first year to pass, to the Civil Courts for redress.

Again, it had been said, that this Bill would be in the nature of one-sided legislation, inasmuch as it imposed hard labor on the ryots for breach of contract, and not on the other party for obtaining the contract through fraud, force, or intimidation. But this Bill did not attempt to provide a complete remedy in all cases. It dealt with the peculiarity of small transactions, for which no remedy could be obtained in a Civil Court. Under the Penal Code, a person who used fraud, force, or intimidation could be punished; and so any contractor who forcibly compelled men to labor for him, might be punished. So in like manner, would the ryot, if you could prove that, at the time he received his advance, he never intended to perform his contract. But how could you prove it? It was not like the case of the man named Dando in England, who used to go into the Oyster shops without a shilling in his pocket, and after eating as many Oysters as he could, walk away without paying for them; he was eventually punished, because, on being searched, it was discovered that he had no money in his pocket, and he was therefore convicted of fraud on the ground that, when he ate the Oysters, he had no intention whatever of paying for them. But that was a very different case from the present. How could it be proved that the ryot, at the time of receiving his advance and entering into his contract, did not intend to fulfil the contract? That was what was required to be proved under the Penal Code. Under this Bill, however, all that was required to be proved was that the ryot, after receiving an advance, had entered into a contract, and that he afterwards refused to perform it. Then the Honorable Member for Bengal had said, how could the Magistrate know that the full amount of the advance had been obtained? By bringing in a Bill on the same subject, the Honorable Member had himself admitted that the existing law was not sufficient to deal with such cases. He (the Vice-President) would ask the Honorable Member, supposing the case were one for a specific performance pending the suit, as provided by his Bill, how could the Judge say whether the money was adequate or not? The question was by no means a question of advance; it was simply a contract to perform a certain work, and the advance was given to enable the man to carry out his contract, for the ryot might be a poor man and not a Capitalist. He (the Vice-President) saw no difference in principle between a case where advance was made, and a case where advance was not made. Once prove that the contract had been broken, and that a large interest was at stake, and it mattered not whether the ryot had received an advance or not. The non-receipt of an advance might be pleaded before the Magistrate by the ryot only as a reason why he should not be put to hard labor. But he (the Vice-President) saw no reason why his taking the advance, like the recruit who took his shilling, should render him liable to hard labor, whereas, if he

took no advance, he would not be so liable. Were there no precedents? Were there no cases in England or in this country in which persons were held criminally responsible for breach of engagement, because a large interest was at stake? Look at the case of the soldier, who deserted after receiving his shilling; he might be punished with death. Look at the sailor; he was liable to be punished in the same way. Look at the Merchant Seaman; he was liable to be punished with three months' imprisonment with hard labor, and in addition to it, to forfeiture of wages. Why was it not said that the ship-owner should be left to the Civil Courts? Because the law saw a large interest at stake. Then in England there was a law which rendered laborers refusing to perform their contract liable to imprisonment with hard labor for three months, and there was an instance of a man who contracted for the digging of a well and Lord Ellenborough treated him as liable under that law. In that case of Lowther against Lord Radnor for levying a distress on the goods of Lowther for disobedience of an order of the Justices for the payment of certain wages to the man who had so contracted, it was held that such a petty contractor came within the scope of the Statute 20 George II., c. 19, but that that law did not make the employer liable to three months' imprisonment with hard labor for not paying his wages. The 4th Geo. IV., c. 34, did not give the same power over the master as it gave over the servant. It provided:—

"And if it shall appear to such Justice that any such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, kielman, pitman, glassman, potter, laborer, or other person, shall not have fulfilled such contract, or has been guilty of any other misconduct or misdemeanor as aforesaid, it shall and may be lawful for such Justice to commit every such person to the House of Correction, there to remain and be held to hard labor for a reasonable time not exceeding three months, &c."

That was exactly what this Bill provided. But it was said that the English Act applied only to laborers. That however made no difference. The question simply was whether these small contracts should form the subject of a Civil suit. The Planter might have made all his arrangements for manufacturing the Indigo, and his plant might be lying idle, while the ryots would tell him, "We will not fulfil our contract. You can bring your action in the Civil Court by applying to the Moonsiff on stamp paper, and then if he decides against us, we will appeal to the Zillah Judge." All this while the Planter's cultivation would be at a stop. Was not that putting a large interest at stake? He (the Vice-President) did not think that we should be violating any of the principles of jurisprudence in passing this Bill. Its principle had been admitted by the Imperial Parliament, and why should not a Bill be framed on the same principle providing for particular interests in this country? The Honorable Member for Bengal himself admitted the principle by bringing in his Bill. But what did he propose? Why, simply that the ryot should be sued in the Civil Court, an order of specific performance issued against him, his property attached under the Code of Civil Procedure if he should be unable to give security, and he himself turned out of his land at once. He might thus be ruined more completely than if he were dealt with by the present Bill and sentenced to hard labor. He (the Vice-President) denied most emphatically that this was a law for the rich and against the poor. It was a law for providing special protection, which, if not provided for, would be injurious to a large interest. It was on that ground that he (the Vice-President) supported this Bill. Looking, therefore, at the present state of the Civil Courts of Judicature in this country in which an appeal was allowed even for the smallest amount, and considering that it had been admitted that Moonsiffs generally could not be trusted to decide small cases of fifty Rupees without an appeal, it appeared to him that it would be injurious in the last degree, in cases of breach of contract for small

amounts, to compel the parties to resort to the Civil Courts for redress under these circumstances.

MR. BEADON said, the extremely able address of the Honorable and learned Vice-President rendered it unnecessary for him to answer several of the objections which had been taken to the Bill. But there were one or two points on which he wished to say a few words.

The Honorable and learned Judge (Sir Charles Jackson) had attempted to place the Government on the horns of a dilemma by arguing that, whether the cultivation of Indigo be voluntary or not, the proposed law was objectionable. If voluntary, he contended that the Bill would be a mistake, inasmuch as it would deter ryots from taking advances; or if not voluntary, the Bill would prove a source of great oppression and injustice to the ryots. He (Mr. Beadon) accepted the former alternative, and had no doubt that the contracts would be voluntary. If any practicable improvement could be suggested in the provision which he had introduced, requiring those who made contracts to file them in the Magistrate's Office within one month after execution, he would be quite willing to agree to it. What he meant to observe now was that the contracts with which this Bill proposed to deal, were purely voluntary contracts. The Honorable and learned Judge then said that our object was to induce ryots to take advances. [SIR CHARLES JACKSON—I said that that is the Planter's object.] Whatever might be the object of the Planters, that certainly was not the object of the Bill. The object of the Bill was simply to punish those who, having taken advances and entered into contracts, afterwards refused or neglected to fulfil their engagements. The Honorable and learned Judge then referred to Act XIII of 1859, and mentioned certain proceedings taken under that Act at Ootacamund, in consequence of which all artificers there had refused to take advances, and business was at a stand still. With reference to that, he might mention that, during the interval which had elapsed since the first reading of the Bill, he had thought it advisable to make some enquiry into the working of Act XIII of 1859 in this city. With this view he had put himself in communication with the Master of the Trade's Association, by whom he had been referred to a gentleman, who had taken a great interest in the question, and who favored him with an interview. He (Mr. Beadon) asked him if he could give him any information as to the manner in which the Act had operated, and whether it had had the effect of deterring artificers from taking advances. The reply he got was that the Act had worked most successfully, and that it certainly did not operate to prevent any workman from taking advances. So emphatic was his informant on this point that he said that the native workmen were so anxious to take advances—and they were of the same class of people as those who were likely to be affected by this Bill—that, even if they knew they would be hanged a year hence for non-performance of contract, they would still take advances. He asked the gentleman to be so good as to put his views on the subject in writing, and shortly before he (Mr. Beadon) came down to the Council this morning, he received a letter from the gentleman, which, with the permission of the Council, he would read to them. It was as follows :—

"With reference to our conversation of last evening, relative to Act XIII of 1859, I am in a position to state confidently that it has worked uncommonly well in Calcutta, and continues a great boon to those who have occasion to employ native artificers and workmen under contract with advances. The Civil Courts were of no avail whatever in remedying the evil and the wrong sustained, for which (previous to the passing of the Act) there was no efficient remedy; but Act XIII has met the case fully, and has been found very efficacious in all respects

No diminution whatever would appear to have taken place in the number of applicants for advances, since the passing of this Act; but, on the contrary, a greater number have come forward, and among these, a better class of men, who, previous to the passing of Act XIII, would not take advances, consequent on the difficulty they experienced in controlling the workmen employed under them. But that

difficulty having been removed, and they feeling themselves better secured against loss, by desertion of their workmen, &c., now readily accept employment under Europeans, which they would not do before."

The Council would bear in mind that this was written of Calcutta, where there was a Small Cause Court on the model of which we were now establishing similar Courts in the Mofussil, and that it was written of persons who, though artificers and workmen in Calcutta, were for the most part occupants of land in their own villages.

The Honorable and learned Judge further remarked that the operation of this Bill would be excessively unjust, inasmuch as, owing to the state of the weather, or to other engagements, the ryot might at times be unable to perform his contract. He observed that, when sowing time came and a shower of rain fell, it was absolutely necessary for the Planter that the land should be ploughed immediately; but that the ryot might have some other engagement which prevented him from going to plough. He (Mr. Beadon) would ask, what business had a ryot to enter into two engagements incompatible with each other? But apart from that, the Bill only subjected a person to punishment for failing to perform his contract without lawful or reasonable excuse; and if he would show good cause for failure, the Magistrate would not punish him.

The Honorable and learned Judge then remarked on the effect of Act XI of 1860 in the Districts of Nuddea and Jessore. He observed that the ryot was not a pauper, and cited a large number of suits which had been instituted in those Districts for small sums, amounting in the aggregate to a very large amount. The average amount recovered in each of these cases was estimated at forty Rupees in Jessore and fifty Rupees in Nuddea. From this he (Mr. Beadon) argued that the Act had admirably answered the purpose for which it was passed, and that a good deal of money had been recovered, which might otherwise have been lost. It was because small contractors would not pay, not because they could not, that legislation was required; and whether the ryot were a pauper or not, he would be liable to imprisonment with hard labor under this Bill, only in the event of his persisting in not performing his lawful engagement, or in refusing to pay the damages which the Magistrate might award.

The Honorable Member for the North-Western Provinces, in his speech from which the Council had derived much instruction and advantage, observed that he was surprised that, when this Bill was introduced, no allusion was made to the circumstances under which Regulation V of 1830 had been repealed. He (Mr. Beadon) did not think it necessary to make a special reference to this matter, because all the papers relating to it were to be found in the Indigo Commissioners' Report. But he would now state plainly how the case stood. Regulation V of 1830 was repealed after having been law for five years, in consequence of an order from home. It was not shown that the Act had worked prejudicially to any class, nor was its repeal the result of any enquiry or any exposition of abuse; but it was repealed by order of the Court of Directors on theoretical grounds, because, though it provided that the ryot should be punished if he refused to fulfil his part of the agreement, it did not provide a corresponding punishment for the Planter.

The Honorable Member had asked, if there would be any objection to furnish the Council with a copy of the Despatch from the Secretary of State, relating to the Act passed last year. He (Mr. Beadon) certainly saw no objection to the production of that Despatch, and would take care that it should be laid before the Council.

The Honorable and learned Vice-President had pointed out several particulars in which the Bill was capable of improvement, and he (Mr. Beadon) generally concurred with him. With reference however to the Honorable and learned Vice-President's observations on the concluding proviso in

Section II, "that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy, by action or otherwise, which he might have had but for this Act," he (Mr Beadon) would only observe that it was a *verbatim* repetition of a similar proviso in Act XIII of 1859, and that it must be borne in mind that the amount of advances might bear a very small proportion to the amount recovered under the contracts, and that a ryot who had received an advance of five Rupees for the delivery of produce worth one hundred Rupees, would go to jail for three months, or pay damages equal to four times the amount of advance, namely twenty Rupees altogether, in order to escape the payment of one hundred Rupees by Civil process. But that, like all other points of detail, would no doubt be carefully considered by the Select Committee.

With regard to the provision in Section VI, which was a substitute for registration, he quite admitted that it was an imperfect substitute, though at present the only practicable one. If we had to wait until a proper system of registration could be established, he was afraid that the passing of the Bill would be delayed for a long time. The Honorable Member for Bengal intended to provide for the registration of contracts in his Bill which was read a first time to-day. If such a provision could be engrafted into his (Mr. Beadon's) Bill, he should be very glad. But if that were impracticable, he thought that the next best plan would be to require that every contract should be filed in the Magistrate's Office within a month after it had been executed. Certainly this would not be proof that a contract had been voluntarily entered into, but it would be evidence of its execution at the time alleged.

With regard to the question of advance, or no advance, he thought the difference in principle, was this. Though the moral crime was, perhaps, not greater in one case than in the other, yet there was a great difference in the degree of temptation and in the probability that the crime would be committed. If a ryot or any other agricultural contractor engaged to deliver a certain amount of produce without receiving an advance, he would rarely be tempted to break his contract, seeing that he would not receive his money till the work was done. But the case was very different when an advance was made. A poor man suddenly found himself with twenty or thirty Rupees in his pocket, and under engagement to deliver a certain quantity of produce a year hence. He might have a marriage in his family shortly afterwards—and a marriage in a native family, of whatever condition in life, was always attended with great expense—and a strong temptation would thus present itself for misappropriating the advance. He (Mr. Beadon) thought, therefore, that there should be a distinction between the two cases, and doubted indeed whether, but for the system of advances, legislation was necessary.

He had no further observations to make on the Bill, and hoped that the Council would allow it to be read a second time.

The question being put, the Council divided:—

Ayes 7.	*Noes* 2.
Mr. Erskine.	Sir Charles Jackson.
Mr. Harington.	Mr. Sconce.
Mr. Laing.	
Sir Robert Napier.	
Mr. Beadon.	
Sir Bartle Frere.	
The Vice-President.	

So the Motion was carried, and the Bill read a second time.

MR. BEADON then moved that the Bill be referred to a Select Committee consisting of The Vice-President, Mr. Laing, Mr. Sconce, Mr. Erskine, and the Mover, with an instruction to submit a preliminary Report under the 62nd Standing Order.

THE VICE-PRESIDENT said, his duties in Court at present were very pressing, and would continue to be so until the opening of the ensuing Criminal Sessions. He was afraid, therefore, that he would be unable to sit in Com-

mittee on the Bill for at least a fortnight.

MR. BEADON said that he had no objection to postponing the consideration of the Bill for a fortnight. The delay for that period was of little importance compared with the value of the Honorable and learned Vice-President's assistance.

The Motion was put and carried.

MR. HARINGTON said, he might mention that he voted for the second reading of the Bill, notwithstanding that he had spoken so strongly against it, because of the understanding that had been come to, that the Bill, though read a second time, should not be published at once, but should be preferred to a Select Committee to report. He thought it very desirable that the whole law as it now stood, in relation to the enforcement of contracts, should be taken into consideration and reported upon by the Select Committee to which this Bill was to be referred; and he begged to move, if the forms of the Council would admit of it, that the Bill which they had this day read a first time on the Motion of the Honorable Member for Bengal, be referred to the same Committee, and that they be instructed to take that Bill and the existing laws into consideration, and to report on them also.

MR. BEADON said that, so far as that proposal was likely to create delay in the submission by the Select Committee of their preliminary Report, he must resist it. He thought it quite sufficient to instruct the Select Committee to consider and report on the form in which this Bill should be published; and he saw no necessity for hampering the Committee with an instruction to consider the whole state of the law relating to Indigo.

THE VICE-PRESIDENT said, he quite concurred with the Honorable Member who spoke last, that it would be better to leave the Committee at present to report on this Bill only. When the Bill of the Honorable Member for Bengal was read a second time, he would no doubt consider it desirable to refer it to the same Committee for consideration. At present it would be premature to do so.

MR. HARINGTON said, he had no wish to cause delay. He thought it would be convenient if the Bill of the Honorable Member for Bengal could be referred at once to the Committee which had just been appointed. But if the forms of the Council did not admit of this being done, he would not press his Motion.

POLICE.

The Order of the Day being read for the third reading of the Bill "for the regulation of Police," the Petition of the British Indian Association was read at the table.

SIR BARTLE FRERE then moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of moving the addition of the following words to Section XXI, as suggested in the above Petition:—

* "No hereditary or other Village Police Officer shall be enrolled without his consent and the consent of those who have the right of nomination. If any Police Officer appointed under Act XX of 1856 (to make better provision for the appointment and maintenance of Police Chowkeydars, in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal) is employed out of the District for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that District."

Agreed to.

The Bill passed through Committee after the above amendment, and the Council having resumed its sitting, was reported.

SIR BARTLE FRERE moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SIR BARTLE FRERE moved that Mr. Laing be requested to take the Bill to the Governor-General for his assent.

Agreed to.

SALTPETRE.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to regulate

the manufacture of Saltpetre and the sale of Salt educed in the manufacture thereof.

The Council adjourned.

Saturday, March 23, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

H. B. Harington, Esq.,	C. J. Erskine, Esq., and
H. Forbes, Esq.,	Hon'ble Sir C. R. M. Jackson.
A. Sconce, Esq.,	

THE Members at the Meeting did not form the quorum required by law for a Meeting of the Council for the purpose of making Laws; and the Vice-President adjourned the Council at half past 11 o'clock till Saturday the 30th instant, at 11 o'clock.

Saturday, March 30, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	C. J. Erskine, Esq., and
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.
H. B. Harington, Esq.,	

POLICE.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "for the regulation of Police."

ARMS ACT.

THE CLERK presented to the Council a Petition from the Anglo-Indian Protective Association praying for the exemption of the Christian inhabitants in India from the operation of Act XXXI of 1860 (relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same and to give power of disarming in certain cases.)

BREACH OF CONTRACT.

THE CLERK presented a Petition from certain Coal and Mineral Proprietors relative to the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

MR. BEADON moved that this Petition, as well as the Petitions of the Protestant Missionaries and of the British Indian Association relative to the same Bill, which were presented to the Council at the last meeting, be printed and referred to the Select Committee on the Bill.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON.)

THE CLERK presented a Petition from certain inhabitants of Rangoon relative to the Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners and for levying rates and taxes in the said Towns."

MR. FORBES moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

BREACH OF INDIGO CONTRACTS.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding copy of a correspondence with the Secretary of State for India relative to Act XI of 1860 (to enforce the fulfilment of Indigo Contracts and to provide for the appointment of a Commission of Enquiry)

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, ma-

nufacture, carriage, and delivery of Agricultural produce."

Agreed to.

SMALL CAUSE COURTS.

THE CLERK reported that he had received from the Home Department a communication from the Madras Government expressing the views of that Government on the subject of the establishment of Small Cause Courts in the Madras Presidency.

MR. BEADON moved that the communication be printed and referred to the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.)"

Agreed to.

ROHILCUND DIVISION.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

PORT-DUES (AMHERST.)

MR. SCONCE presented the Report of the Select Committee on the Bill "for the levy of Port-dues in the Port of Amherst."

REPEAL OF REGULATIONS AND ACTS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter."

SALTPETRE.

MR. HARINGTON moved the first reading of a Bill to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof. He said, at the present time the manufacture of Saltpetre in India was under no regulation. In so far as the law was concerned, any person might manufacture Saltpetre at any place, in any quantity, and of any quality that he pleased. But although no legal restrictions existed at present on the manufacture of Saltpetre in this country, there was not the same freedom of action in respect of the salt which was produced in the manufacture of Saltpetre. Section IX Act XXXVI of 1855 declared :—

"The purification or refinement of impure Salt, obtained in the manufacture of Saltpetre, so as to produce alimentary Salt, shall be deemed a manufacture of Salt within the meaning of this Act and of Act XIV of 1843."

It was not necessary for the purposes of the present Bill that he should notice particularly the other Sections of this Act, but he must call the attention of the Council to Section IV Act XIV of 1843, which was referred to in Act XXXVI of 1855. That Section enacted—

"From and after the first day of September 1843, the manufacture of alimentary Salt throughout the North-Western Provinces of the Presidency of Bengal, without the express sanction of the Government, is prohibited, and any person engaging in the manufacture of such Salt, or preparing, or causing to be prepared works for the manufacture of such Salt, without such sanction, and all Zemindars or other proprietors of land, or their Agents, conniving at such illicit manufacture, shall, on conviction by the Magistrate, within the limits of whose District the offence may have occurred, be punished by a fine not exceeding 500 Rupees, and on non-payment of such fine, by imprisonment not exceeding six months with or without hard labor, and all works at which such manufacture shall have been conducted or which are designed for such manufacture, shall be destroyed, and any Salt which may be manufactured or stored thereat, shall be seized and confiscated."

The Council would have observed that both Act XIV of 1843 and Act XXXVI of 1855, applied only to the North-Western Provinces of the Presidency of Bengal. The manufacture of alimentary salt, however, except with the sanction, or on account of Government, was no less prohibited by law in the Lower Provinces of Bengal, and

he believed he was right in saying that the prohibitory law extended equally to the purification in those Provinces of the salt produced in the manufacture of Saltpetre. The Presidencies of Madras and Bombay had their own salt laws. It was objected to the rules contained in the enactments which he had quoted that they operated unfairly to the manufacturer of saltpetre, and were attended with injurious effects upon the manufacture itself, whereby the Government really suffered in the end, though the rules in question were no doubt enacted to protect the revenue derived to the State from the duty on salt. To show how these rules acted as a clog upon the skill and enterprise of the persons concerned in the manufacture of saltpetre, and how greatly they interfered with the manufacture, he would read an Extract from a Minute recorded by Mr. E. A. Reade, the late able Senior Member of the Sudder Board of Revenue at Allahabad, with whom the proposition for the present legislation appeared to have originated. In the 17th para. of this Minute, Mr. Reade observed :—

"At the refinery, specially, where under European Superintendence the process is effected with greater art, and where there is a greater confidence of successful contention with the common enemy, the Customs Officer, the reduction of salt is all the more perfect, because the object is to have the Saltpetre as pure as possible for the Calcutta market and exportation beyond sea. The impure mass, containing salt which is precipitated in boiling the Saltpetre itself being held in solution mainly, is washed with cold water over the boiler, not to extract edible salt, but to lose none of the nitrous particles which the impure mass may still retain. Unavoidably the salt is purified as well as the Saltpetre, and yet in fact by doing so the refiner is guilty of an offence against Section IX Act XXXVI of 1855."

This was the Section which he had read to the Council. Mr. Reade went on to say—

"There is no law or rule respecting the residuary salt in Saltpetre manufactory, whether impure or pure. Its consumption is not prohibited, its destruction is not enjoined, its disposal is left in uncertainty.

"The result is, that branch of beneficial industry is depressed, because it unavoidably involves an element which subjects the manufacturer to official persecution. He may exercise the utmost prudence, but there will always be risk of trouble, and a certainty of being confounded with the class who conduct the manufacture only with an eye to illicit trade.

"The desideratum is a law which will subject regulation for confusion, protect honest industry, and give the State a fairly demandable revenue on a staple product."

The present Bill was introduced on the recommendation of the Honorable the Lieutenant-Governor of the North-Western Provinces, and with the full concurrence of the Government of India, in order to supply the want noticed by Mr. Reade. It was hoped that the effect of the Bill would be to remove the impediments in the way of improving the manufacture of Saltpetre which were the consequence of the existing laws, and to turn to profitable account the salt produced in the manufacture, and that so far from any pecuniary loss accruing to the Government from the operation of the Bill, it would lead to some addition to the public revenue, partly from the introduction of a system of licenses for carrying on Saltpetre works, but chiefly from the duty which the Bill proposed to place on the sale of the salt produced in the manufacture of Saltpetre. Some extra establishment would, of course, be necessary properly to carry out the provisions of the Bill, but after allowing a reasonable sum on that account, it was believed that a surplus would remain. The probable amount was variously estimated, but the lowest estimate which he had seen placed it at three lakhs of Rupees per annum. He must repeat what seemed to be generally admitted, that the present law and practice were alike vexatious to the manufacturer of Saltpetre and injurious to the revenue, and he ventured to think that the introduction of a system which would allow of the salt produced in the manufacture of Saltpetre being purified, and on the payment of a fair duty brought into the market for sale, would be regarded by the Council as a just and politic measure, and as a proper concession to

the persons engaged in the manufacture of Saltpetre.

Before proceeding to notice in detail the provisions of the Bill, it was right he should mention that some difference of opinion existed as to whether the Bill should treat all Saltpetre manufactories alike, and place them on exactly the same footing, or whether it should not make a distinction between Saltpetre refineries and crude Saltpetre works. It seemed to be thought by many who advocated the former course, that in the crude process of manufacture salt must necessarily be produced just as much as in the refining process. But this was apparently a mistake. In a paper, which would be circulated as an annexure of the Bill, it was stated that—

"In the *bonâ fide* Jhiria process salt is certainly not produced. But by a second or prolonged boiling, the salt in the crude material may be precipitated. In works avowedly established *bonâ fide* for the production of the crude material, this second or prolonged boiling forms no part of the process, and there can be no hardship to fair dealers in declaring such attempts at separating the salt, without special license, to be illegal. The hardship, if there is any, in the prohibition, as at present existing, will altogether disappear in the proposed scheme, by which the salt element in the crude material will become more valuable to the refiner from the liberty of purifying it and selling the salt so produced."

The number of crude Saltpetre works was very large. In the Presidency of Bengal they exceeded 10,000. For the most part these works were of very limited extent, making but little Saltpetre, and being scattered all over the country, it would not be possible to bring them under proper regulation and control otherwise than by means of an establishment, the cost of which would of itself be quite a sufficient reason against its being entertained. It was scarcely necessary for him to add, that to allow all these petty works to purify salt, unless under a very close supervision, would simply be to convert them into so many illicit salt manufactories to the serious injury of the salt revenue. There seemed no alternative, therefore, but absolutely to prohibit the separation of salt in the crude Saltpetre works, which was what the Bill proposed.

It was intended that the Bill should apply not only to all Saltpetre works, but to every other description of work at which any substance was produced from saline earths. The Bill would thus include works for the production of what was called "Russee," or "Sujjee," which was an alkaline substance used for soap and Kharee noon or Glauber salts, that was Sulphate of Soda. These works served equally well for the manufacture of common salt, and were so used whenever it could be done without much risk of detection. The Bill provided that Saltpetre works of both kinds, as well as the other works just mentioned, should be carried on under license, the license to be renewable every year. A fee would be charged when the license was first taken out, as well as on every subsequent renewal The amount had been left to be settled hereafter. For crude Saltpetre works a fee of 2 Rupees was proposed, and for Saltpetre refineries a fee of 100 Rupees. Many thought this too large a sum, and that it should not exceed 50 Rupees. At the lower rate it was anticipated that the effect would be to close many Saltpetre works, but he did not know that this would be a subject for regret.

As already mentioned, the Bill provided that salt produced and purified at a manufactory licensed to purify salt obtained in the manufacture of Saltpetre should be liable to duty; the amount would be paid before the salt was removed from the factory where it was produced. The rates of duty proposed were the same as those to which imported salt was now liable. The site of every Saltpetre work and of other licensed works, and of the country around within a certain radius, would be subject to customs jurisdiction and to the provisions of the existing laws against the manufacture of salt, except under a Government license. The Bill gave the local Governments power to compound for the duty on the

sale of Salt produced in the manufacture of Saltpetre for one or more years, and provisions were added to prevent the privilege from being abused. Penalties were also prescribed for any breach of the provisions of the Bill; and lastly, the Bill empowered the local Governments to frame and issue subsidiary rules for carrying out the provisions of the Bill not inconsistent therewith. The rules so framed would be published in the Official Gazette, and would then have the force of law. These were the principal provisions of the Bill.

MR. LAING seconded the Motion, which was then put and carried, and the Bill read a first time.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE moved the second reading of a Bill "te amend Act X of of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)."

The Motion was carried, and the Bill read a second time.

REGISTRATION OF CONTRACTS.

The Order of the Day being read for the second reading of the Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of agricultural produce"—

MR. SCONCE said that, before moving the second reading of this Bill, he would ask the indulgence of the Council again to allude to the objects he had in view in introducing it for their consideration. It was a Bill, he need not say, to facilitate the enforcement of contracts duly entered into—of contracts of a particular kind, and not contracts in general—but contracts duly entered into for the cultivation and delivery of agricultural produce. This specification of the kind of contracts with which the Bill proposed to deal, necessarily, to some material extent, took out the Bill from the scope of other classes of contracts. One main purpose which the Bill was intended to indicate and recognize was that contracts of this description, duly entered into for the cultivation and delivery of agricultural produce, if broken, should be redressed by the award of damages. No doubt he proposed in certain cases to afford special aid to those by whom, for the cultivation of agricultural produce on defined portions of land. advances had been made; but the principle which it was the main purpose of the Bill to affirm was that the remedy for a breach of contract should be sought, not in a specific performance of the contract, but by a claim for pecuniary compensation; and that principle he hoped he should be able to induce the Council to accept. We were told the other day and well told by the Honorable Member of Government nearest to him (Mr. Laing), that the character of a law should have a material effect in promoting the morality of the people. In that opinion, and as to the effect of laws in securing that end, he (Mr. Sconce) thoroughly agreed. But perhaps he might carry the proposition farther. He believed that, with the view to so great an end, the powers of any legislature, but more especially the powers of a legislature established and working in India, were of the highest possible value. He was speaking of a legislature composed of Englishmen sitting here to construct laws for India. Looking to the position and character of Englishmen on the one hand, and the position and character of the Natives of India on the other, he might say that a legislature such as this should, in framing its laws, bring the immense advantage of a matured humanity and advanced civilization to operate for the benefit of India. Whatever tributary benefits England derived from India—and he for one could not ignore the fact—such benefits he believed to be insignificant when compared with those which the matured civilization of England, the concentrated work and experience of centuries, enabled it to contribute for the material and moral elevation of the people of India. It had been said that songs were the best means of educating the character of a people.

So it might be in the nonage of the world. For himself he would look for the greatest efficacy in the laws of a nation; and at this period of time, and in this country, he held that humane and enlightened laws should exercise the largest influence in reforming and moulding the national character. In that sense, therefore, he thoroughly accepted the statement that our laws should improve the morality of the people. But such laws must be good laws; laws which in their very nature were not unequal and unjust, which were not to be administered regardless of the safeguards ordinarily held essential to afford security against abuse, and which, as guarantees for their observance, should not be obviously enforced by partial and inapplicable punishments. He did freely adhere to the opinion that it might be the ulterior object of this legislature, by wise and beneficent laws, to elevate the moral character of the people subject to their influence; and as one illustration of the sense in which he applied this statement, he would say that our laws should promote self-reliance and fore-thought, and should abstain from fostering improvidence, which, certainly, they would foster by substituting legal penalties for the securities that men with care and prudence should find for themselves. He had said that one main object of this Bill was to indicate that the breach of contracts should be redressed by a suit for damages. He did not mean directly to revive the question as to the purpose and effect of the Bill which they had been the other day considering, for punishing criminally breaches of agricultural contracts. He would confine himself to the principles which he desired to maintain in offering his own Bill for the acceptance of the Council. Now, he apprehended, speaking broadly, that breaches of contract could not be dealt with as criminal offences. Without going into details, but looking merely to the case of a contract by which two parties were mutually bound, he must say that the simple non-fulfilment of a promise made could not be punished in the same way as you would punish an offender against the criminal law. If it were to be so, a man who would contract to sell a house or a horse, and failed to fulfil his contract, must be looked upon as a criminal, and punished criminally. This was held to be impossible in all countries, and if this were so as regards the more simple classes of contracts, the same principle should more justly govern the more complicated cases of agricultural contracts. As regarded ryots, however, there was a material difference. Various opinions were held by Honorable Members of this Council as to what ryots were. Some Honorable Members, he thought, unduly demeaned the position of ryots by describing them as laborers, whilst others unnecessarily exalted them to the station of gentlemen possessing landed estates. He avoided those extremes. He took the ryots as they were, and looked upon them neither as landlords nor as coolies. One man held 10 beegahs of land, another 50 beegahs, another 100 beegahs, or it might be more. In some instances with his own labor, in very many instances with hired labor, in all cases with ploughs and with bullocks, the ryot tilled his land, and upon the produce and profits of his land he lived. That was shortly what he considered the position of a ryot was, and he thought he was fairly entitled to apply to the ryot the principle to which he had referred, namely, that, if the ryot had engaged to cultivate or deliver the produce of his land, the breach of his engagement should not be punished criminally, but by Civil damages. Now, in advocating this principle, he thought he was not without some authority. It was only four years ago that this Council was asked to reconsider and amend the law applicable to the manufacture of opium. We all knew that cultivators of Indigo were reckoned by tens of thousands: but so also was it with cultivators of Opium. For instance, in the Sub-Deputy Agency of Gya, the ryots who received advances for the cultivation of opium in 1858-59 amounted to 65,912, and in the Sub-Deputy Agency of Patna to

32,354. The cultivation of Opium was last dealt with by Act XIII of 1857, Section X of which provided as follows :—

"If it shall be found that any cultivator who has received advances from Government, has not cultivated the full quantity of land for which he received such advances, he shall be liable to a penalty of three times the amount of the advances received for the land which he has failed to cultivate ; and the said penalty may be adjudged by the Deputy Agent or Collector, on the complaint of the Sub-Deputy Agent or other Officer as aforesaid. Any person dissatisfied with the judgment of the Deputy Agent or Collector may appeal to the Agent, and the decision of the Agent shall be final."

There were three things here which he wished the Council specially to notice. The first was that when a ryot, who received an advance to cultivate Opium failed to fulfil his contract, the only remedy afforded by the law was to hold him liable to pay damages not exceeding three times the amount of the advance received. The next point was that this amount of damages was awardable on the ascertained failure of the ryot to perform his contract, without any attempt, by aid of the law, to enforce a specific performance. The third and, under present circumstances, most remarkable point was that, when the damages were awarded, there was an appeal. So far therefore he thought he might ask the Council to admit that, in dealing with Opium cultivation, the Council affirmed the principle that breach of contracts should be met by the award of Civil damages. But there was something more than even that. Looking to the amount advanced in 1858-59, in the Sub-Deputy Agency of Gya, for example, where the ryots numbered more than 65,000, the advances paid previous to the delivery of the crop amounted to 3,78,761 Rupees, which was, on an average, considerably above 5 Rupees a head. Then again, in the Sub-Deputy Agency of Patna, where the ryots were about 32,000 in number, the advances exceeded two lakhs and a half, that is about 8 Rupees a head ; and to secure the fulfilment of the contracts for which these large amounts were paid, the only remedy which the Government found necessary was that any ryot failing to cultivate should be liable to be sued for money damages, and that those money damages should not exceed three times the amount of advance.

Another point arising upon this Bill, to which he wished to invite the attention of the Council, was that he avoided offering the remedy of a specific performance. He was by no means prepared to say that Civil Courts, far less Criminal Courts, could enforce a specific performance. He did advert to it this day fortnight, and the Honorable and learned Judge to his right (Sir Charles Jackson) also contended, with a force still in the recollection of the Council that, in dealing with Indigo contracts, you could not, with any degree of justice, attempt to require ryots under the order of Magistrates to specifically execute the various and successive operations necessary to the cultivation of Indigo or any other crop. He would ask the Council what they had learnt from the Report of the Indigo Commission. He believed all Honorable Members must be aware that whatever grievances the ryots professed to labour under, none were more loudly complained of than the continual interference with them in the various stages of cultivation. Without straining facts in favor either of one side or the other, he believed he might state that the unwillingness on the part of the ryots to cultivate indigo greatly arose from the incessant demands made upon them to carry on the cultivation at a time and in a manner which they felt to be unseasonable and unendurable. Well then it seemed to him on that ground, if not on higher ground, that the intervention of the Courts to direct the specific performance of an agricultural contract was extremely inadvisable. He would not repeat in detail the ground which he mentioned last Saturday week. He would simply say that a Judge of any Court was not sufficiently expert in agricultural matters to direct specific performance. It was not for a Judge to determine, when a question was brought before him for breach of contract, as to

the time when the ryot should plough his land, or sow his seed, or gather the grown crop; and looking not only to Indigo but to Cotton and other cultivation, no Magistrate or Judge could be looked upon in any one of those respects as competent to deal with such questions. He had used what might have appeared to the Council a strong word, perhaps too strong a word, in saying that the specific enforcement of these contracts was *impossible*; but it might be permitted to him to say that, it appeared to him, the Honorable and learned Vice President, with reference to what he had said as to the possibility of a Magistrate taking cognizance of such contracts, had not adverted to the sense of the word "possible" as used in the Bill of the Honorable gentleman (Mr. Beadon), and had misapprehended, as he (Mr. Sconce) thought, the argument he had used. In Section II of the Bill which we were considering this day fortnight, it was provided that the Magistrate might order the ryot "if it be possible" to perform the contract. Now he understood that in the sense of a physical performance; that is, it might be still possible to sow land that had not been sowed, or cut a crop that was still on the ground; and it would be for a Magistrate to consider whether he should make an order to sow the land or, as might be, to cut a growing crop. So far certainly one operation or the other was possible. But the impossibility he (Mr. Sconce) spoke of was not the impossibility of doing a particular thing, but had reference to the Magistrate taking cognizance at all of such matters. In illustration of the argument which he ventured then, as now, to address to the Council, there was one of peculiar significance which he wished to urge. He still lingered on the impossibility of specifically enforcing contracts such as these. You must look to the ryot as he stood before you, as a man, it might be, bound by special responsibilities but vested also with various interests the value and object of which you could not overlook. Deal with a ryot as you would deal with another man in the same circumstances. Then what he (Mr. Sconce) wished to notice was, as stated in the course of the enquiry by the Indigo Commissioners, that upon an average, at least in the Bengal Indigo Company's factories, ryots had been in the habit of cultivating with Indigo one out of every fifteen beegahs of the land in their occupation. One fifteenth of the whole therefore was understood to be appropriated to the cultivation of Indigo, whilst the remaining fourteen-fifteenths were devoted, it might be, to the cultivation of rice. The ryot had an interest in growing rice of which you could not divest him: it was 14 to 1 as against Indigo. And admitting fully the force of the contract into which he might have entered to cultivate one beegah of land with Indigo, it was utterly impossible, it seemed to him (Mr. Sconce), that any Court should feel itself competent, when the season for cultivation came round, to supersede a ryot in the management of his own land and to direct the abandonment of 14 beegahs that one beegah might be cultivated. Least of all, out of such circumstances could you construct an offence and for breach of contract throw the offender into jail.

There was yet another matter to which he should wish to allude. The very great number of complaints of breach of contract that might have to be preferred had been urged as one objection against his Bill. It had been said it might be 10,000 or 20,000. The Council would see at once, supposing the necessity to arise for the institution of 10,000 cases, that there would be 10,000 complaints, whether you had one Court or another; a Civil Court or a Criminal Court. He did not know whether the Honorable Member of Government (Mr. Laing) had ever been practically engaged in the administration of justice. However that might be, it was obvious that, whether you dealt with a complaint in a Civil or a Criminal Court, the procedure in either case to be imperatively followed was not materially dissimilar. Complaints must be followed by summonses or warrants. You must have the parties before you. You must be prepared to

receive evidence and hear witnesses; and when both parties were fully heard, the adjudication would follow. So far then you advanced nothing by going to a Criminal rather than a Civil tribunal. You gained absolutely nothing; while by the flagrant dereliction of principle involved in carrying such cases before an incompetent Court and forcing a hearing there, you would inflict a material loss on the cause of public justice. Observe that, in the last Section of the Breach of Contracts Bill, it was provided that the powers of a Magistrate might be exercised by any Judge of a Small Cause Court. Well, he (Mr. Sconce) supposed that a Judge appointed to preside in a Court of Small Causes might efficiently try, as the very Act under which he was appointed required him to try, claims relating to breach of contract. But unhappily the peculiar qualifications which this Officer as a Civil Judge would be competent and would be bound to exercise were to be thrown away, and it was proposed that he should act, not as a Civil Judge, but as a Magistrate. He thought he might appeal to the Council if, in the sketch which in support of his motion for the second reading of this Bill he had made, he had overstated matters. He had already trespassed long upon the time of the Council and was very unwilling to detain them with any further observations; but he would wish to notice one other matter which seemed to furnish a striking corroboration of the justice of the course that he advocated in promoting this Bill. The Honorable and learned Vice-President observed the other day that he saw no difference between the case where an advance was made, and a case where an advance was not made. Now, looking to the use of the word "advance" in the Bill brought in by his Honorable friend (Mr. Beadon), he quite agreed with the Honorable and learned gentleman. He believed that he had stated in the debate upon that Bill that, as to the advance, it might be two Rupees or two pice; and in such a case therefore it was clear that there might as well be no advance at all. He thought that that was the only logical conclusion at which it was possible to arrive. But this conclusion exhibited stronger than ever the impossibility of dealing criminally with such breaches of contract. The cases were reduced to those in which there had been a simple agreement to cultivate without consideration: and the Legislature was asked to promulgate a law which should declare the failure to perform a mere gratuitous promise as a public crime.

He thanked the Council for the attention with which they had heard him, and begged to move that the Bill be read a second time.

MR. BEADON said that, if he had not had the Orders of the Day for Saturday the 30th March 1861 before him, he could really have supposed, from the tenor of the remarks which had just fallen from his Honorable friend the Member for Bengal, that they were still engaged in the debate upon the Bill of which he (Mr. Beadon) had the honor to move the second reading last Saturday week. The Bill of which the Honorable Member had just moved the second reading was a Bill for improving the law relating to the enforcement of a certain description of contracts by civil process. It might or might not be necessary to improve the law in that respect. But the question, as he understood, now before the Council, was not whether the breach of contracts of this description should be punished criminally or not. That question was decided by a formal vote of this Council a fortnight ago. But the question was whether the law for the enforcement of contracts by Civil process should be improved or not, and to that question, he (Mr. Beadon) apprehended, the Honorable gentleman's remarks were scarcely applicable. It was not his (Mr. Beadon's) intention to oppose the second reading of this Bill, because, though it had been brought forward and strongly urged as a substitute for the Bill which he (Mr. Beadon) had charge of, it was not in the least degree inconsistent with it; and so far as it provided for the registration of

contracts, he should be glad if it were found possible to incorporate some better provisions of that kind with his Bill. He presumed, if the second reading of this Bill were carried, it would be referred to a Select Committee, and no doubt it would be convenient if it were referred to the same Select Committee which was charged with the consideration of the former Bill, and under like instructions as to a preliminary report. Though, therefore, he did not intend to vote against the second reading, he wished it to be understood that he by no means approved of the Bill or held himself pledged to support it. A general registration of contracts was in itself a desirable measure, and if the law of Civil Procedure needed amendment, it was right to amend it. But though, as he had already observed, this Bill was not inconsistent with the one which he had brought in, and, as regards registration, aimed at the same object, he thought that the provisions framed for that purpose would be found ineffectual, and that the other Clauses of the Bill were unnecessary.

THE VICE-PRESIDENT said, he expected to have heard from the Honorable Member for Bengal some observations in support of the present Bill. He must say that there did not appear to him to be any necessity for passing a law for the registration of contracts relating to agricultural produce in particular. He did not know why there should be a special law for the registration of agricultural contracts any more than for other contracts; and it certainly appeared to him that the registry provided by this Bill would be quite ineffectual. Section I of the Bill provided that the local Government might appoint Registrars in any district; and Section II provided that, upon the appointment of any such Registrar, the appointment should be notified in the Gazette. Section III then provided as follows:—

"On the presentation of any such engagement for registry, the Registrar shall not register the same unless it appear to him that the cultivator, by whom the engagement bears to have been executed personally executed the same."

That was a matter for enquiry before the Registrar. The Section went on to provide:—

"In every case such cultivator and the person in whose favor the engagement is executed, or their respective Agents, shall appear before the Registrar and be examined by that Officer."

The cultivator and the person who claimed the advance were both to appear before the Registrar or send an agent. The Section continued:—

"Also the identity of the cultivator, if present, or the execution by him of the engagement, if absent, and the authority of his Agent to appear for him,"

that was a third point to be proved—

"shall be attested by not less than two credible witnesses, being residents of the village in which the land engaged for is situated, or in which the cultivator resides."

So that to register these petty contracts, four persons at least would be required to go before the Registrar. He did not believe that it was intended to make such a law compulsory. If that, however, was the intention of this Bill, he certainly objected to it. Section IV went on to provide that "the substance of the statements made before the Registrar, under the next preceding Section," should "be given in the Register, and be certified by the Registrar." To whom or for what purpose the Registrar was to certify, did not appear. But so it was according to the Bill; and on the appearance of these four persons before the Registrar, he was required not only to record the substance of the evidence given before him, but he was also to certify it. It was then provided that "such statements, so certified, shall be taken to be the evidence given by such persons in the matters aforesaid." But when it was taken to be the evidence given by such persons, for what purpose was it to be taken to be their evidence? Was such evidence to be taken either as *primâ facie* or as conclusive evidence

in the Civil Court? The Bill was silent upon that subject. It appeared to him that such a registration would be utterly fruitless. We had a law for the punishment of forgery and of personation, both of which offences were fully provided for in the Penal Code. Were we then to pass a special law for the registration of particular contracts, when we had before us a Bill, which had been referred to a Select Committee, for the registration of contracts in general? So far, therefore, as this portion of the Bill was concerned, he decidedly objected to it. Section V then provided as follows :—

"No engagement, as aforesaid, shall be registered, unless a fee of be first paid: and all fees so paid shall be accounted for by the Registrar in such manner as the local Government may direct."

He did not know how it was proposed to fill up the blank. He believed that the Honorable Member for Bengal himself had not made up his mind as to the amount of the fee to be paid. But whether it was to be large or small, he did not believe that any one would voluntarily pay it. Section VI related to the salary of the Registrar. Then the Bill proceeded with a new subject. Section VII provided that a person who advanced money for cultivation on specified land should be deemed to have a lien on the crop. Other Sections provided for matters which were already included in the Code of Civil Procedure. Did the Honorable Member for Bengal propose to supersede by this Bill the one which had already been read a second time? Or did he propose to have two laws on the same subject? If he (the Vice-President) mistook not, the Honorable Member for Bengal was a Member of the Select Committee which had been appointed to consider and report upon the other Bill before it was published. If this Bill was to be referred to the same Committee, the Committee would still have two Bills to report upon, and would have no power to consolidate them. As a Member of that Committee, however, the Honorable Member, without reading this Bill a second time, could propose the introduction of any of the Clauses of this Bill which he considered material. In order, therefore, to prevent the necessity of publishing two Bills relating to the same matter, he (the Vice-President) should vote against the second reading of this Bill, leaving it to the Honorable Member to propose any modification he considered necessary in the Bill already referred to a Select Committee. He (the Vice-President) would not give his sanction to any mode of registration like that provided for in the Bill; and if he voted in support of the second reading, he was afraid he should be bound to the principle of two different Bills. The Honorable Member had said that morality was inculcated by good laws. He (the Vice-President) did not know whether the Honorable Member looked upon this Bill as one of that class. The Honorable Member had also drawn a distinction between good laws and bad laws. He (the Vice-President) considered that this would be a bad law, and he should therefore vote against the second reading of it.

SIR BARTLE FRERE said, he would only offer a very few remarks to clear himself from any charge of inconsistency in voting for the Bill now before the Council after having voted for that of his Honorable friend opposite (Mr. Beadon) on a previous occasion. He believed that both Bills were wanted, and that the law relating to contracts for agricultural produce was at present defective both as regarded criminal prosecution for frauds and civil remedy for recovering damages. He must again protest against these Bills being regarded as Indigo Bills. It seemed to him that the great lesson taught by the Report of the Indigo Commissioners was that more Courts and better Courts were needed in Bengal, and that speedier, cheaper, and more certain and effectual modes of obtaining redress through the Courts was called for both in criminal prosecutions and in civil actions regarding contracts relating to agricultural produce.

He would not pledge himself to support all the details of the Bill

of the Honorable Member for Bengal. But he fully approved of the principle; and as regarded those details which had been commented on by the Honorable and learned Vice-President, he (Sir Bartle Frere) must say they did not strike him as open to objection—the Registration Clauses for instance. He could not speak from experience of Bengal, but as regarded Bombay, he believed that the Clauses were not only very much wanted, but that their provisions would be very easily carried out, especially if the village accountants were made to register contracts in the same manner as they registered other papers. He then described how, by means of stamped books of printed forms furnished to him, the village accountant could carry registration of many scores of contracts for the delivery of agricultural produce in a single day. Even under the provisions of the present Bill, which, however, he thought might admit of simplification, he could safely say that as regarded Western India, some such Bill as that before them had been long desired and asked for by merchants and others interested in the collection of agricultural produce, and no difficulty would be found in working out the details. He did not think that the Bill of his Honorable friend opposite (Mr. Beadon), for the summary punishment of frauds as a criminal offence, was sufficient by itself. Many of the contracts in the Cotton districts were for large amounts, and it was desirable to have the means of enforcing them by civil process with less delay and expense than might be inevitable in the case of other contracts. On the other hand he could not agree with the Honorable Member for Bengal that there was any hardship to the poor man in allowing the other party the option of proceeding either by civil action or criminal prosecution.

To revert to the illustration he had used on a former occasion of a hackney coachman who wilfully or fraudulently broke his contract, it was surely better even for the cabman's interest to have the matter summarily settled before a Magistrate rather than drag the cabman into a lawsuit. As regarded any apprehension of oppression being exercised by planters habitually resorting to the law, he thought that the Honorable Member for Bengal had over-estimated the possible evil, and that the planters' self-interest might be more relied on. It did not follow that, because a remedy was provided, the planters should be always resorting to it. It would generally be sufficient for their purpose that the remedy was known to exist. He instanced the case of the law against frauds in the packing of Cotton, which had been very urgently called for, but which, when enacted, was very seldom put in force. The mere knowledge that the law to furnish fraud existed was of itself a check upon fraud, and except in extreme cases, parties injured rarely resorted to the law.

He should vote for the second reading, and hoped that both Bills would, with some modifications, be passed into law.

MR. HARINGTON said, in the few remarks which he was about to make on the Bill, to which the Motion now before the Council applied, he did not intend to enter again into the provisions of the Bill which they had read a second time that day fortnight, on the motion of the Honorable Member of Council opposite (Mr. Beadon). It seemed to him that in the observations which the Honorable Member for Bengal had made to-day on that Bill, he was a little out of order. He (Mr. Harington) regarded that Bill as having passed for a time out of that chamber into another room, though after an interval it would no doubt come before them again. He had voted for the second reading of the Bill brought in by the Honorable Member of Council opposite (Mr. Beadon), without binding himself in any way to the principle of the Bill, on the understanding that it was not to be published at once but was to be referred to a Select Committee for report. He was quite willing to vote for the second reading of the Bill brought in by the Honorable Member for Bengal on the same understanding, and he trusted that the Honorable

Member would adopt the suggestion which had been made, and allow his Bill to be referred to the same Committee to which the other Bill had been sent. In speaking on the Bill introduced by the Honorable Member of Council (Mr. Beadon), he said he very much questioned whether the country really required either of the two Bills now before the Council, and, after carefully considering the subject during the interval that had since elapsed, he continued of opinion that neither Bill was wanted. He thought they had quite law enough for the enforcement of contracts. He would refer particularly to the new Code of Civil Procedure, one of the Sections of which authorized the immediate imprisonment of a party who failed to fulfil a contract into which he had entered, and his detention in jail until he agreed to perform his contract, or so long as the Court pleased to keep him there. What more was required than this ? and would the Bill of the Honorable Member of Council opposite (Mr. Beadon) do more ? But it was objected that some procedure more summary and expeditious than that of a Civil Court was required. He thought that those who made this objection could not properly have studied the provisions of the new Procedure Code. He believed it to be impossible for the procedure of any Court to be more speedy or summary. The Honorable Member for Bengal had shown them that whatever was the character of the Court which tried these contract cases, there must be a plaint or petition of complaint ; he had shown them that some process must be issued for getting the accused person before the Court ; he had shown them that witnesses must be summoned and their evidence taken, and he had shown them that there must be deliberation upon the evidence to be followed by a judgment. Now he (Mr. Harington) contended that all this might be done, all these stages of the case might be gone through, as rapidly in any Civil Court under the new Code of Civil Procedure, as in any Criminal Court under any Code of Criminal Procedure.

Mr. Harington

He believed that the Honorable Member of Council on his left (Sir Bartle Frere) was in error in what he had stated as to the conclusion to be arrived at from the Report of the Indigo Commission. He said if that report proved any one thing more than another it was that reforms were required in the Police, in Criminal Justice, and in the Civil law. Now he (Mr. Harington) found no complaint of the Civil law in the Report of the Indigo Commission, nor any proposition to alter it. To the excellence of the new Code of Civil Procedure the Commissioners bore important testimony. They compared it to the Procedure of the Small Cause Courts, than which nothing could be more summary or simple. What was really required were competent Courts—Courts presided over by competent Judges, in whose decisions the public would have confidence. If such Courts were established, they might get rid of the repeated appeals of the present system, of which such loud complaints were made. Some time ago he remarked to the Council that what the country wanted was rest. He would make the same remark now, with this addition, that rest from this over-legislation was what the country required. He repeated they had law enough, they wanted competent Courts to administer the law they had. So convinced was he of this, that in September or October last, when he saw what was going on in the Indigo Districts, he again brought before the Council the Bill introduced by him for establishing Courts of Small Causes in the Mofussil, which circumstances had almost led him to abandon altogether ; but although that Bill had passed into law, it was with great regret he observed that little if any thing had as yet been done to give effect to it. He was informed that financial considerations had interfered to prevent the Bill from being carried out in the manner contemplated by him. No doubt an economical administration of the public revenues was highly necessary at the present time, but he was quite satisfied that Courts such as he wished to see

established, whatever might be their cost, would prove true economy in the end. He thought he saw a disposition to dwarf down the Act introduced by him, but he hoped this would not be permitted by the Council. He feared that if they did not take care, all that they would get would be the existing Courts under a different name and exercising larger powers. This was not what he contemplated when he brought in his Bill. He desired to see Courts of Small Causes presided over by English, Irish, and Scotch Barristers, care of course being taken that the gentlemen selected had a competent knowledge of the Native Languages. Courts so constituted would, he believed, give satisfaction alike to the Indigo Planter and to the Indigo Ryot. All classes would have confidence in them. He believed that had such Courts been established long ago, they would not have been called upon to consider either the Bill of the Honorable Member of Council opposite (Mr. Beadon) or the Bill now before them.

MR. LAING said, he considered it necessary to say a few words in consequence of the speech of the Honorable Member for the North-Western Provinces. It must not be supposed that the views of the Government were as vague upon this important question as those of his Honorable friend, which apparently led him to speak against and vote for any measure that was proposed. His Honorable friend's argument was that no new law was needed, as all that was requisite in the shape of legislation had already been done, and from these premises his Honorable friend's conclusion was to vote for both Bills and refer them to the same Committee. Had the Bill of the Honorable Member for Bengal embodied the same principles as his speech, nothing on earth would have induced him (Mr. Laing) to abstain from voting against it. The Government would not consent to treat as an open question the great principle which was asserted on Saturday week in this Council by a large majority. That principle was that breaches of contracts, where there had been an intentional and wilful default, were to be considered as fraudulent, and punished criminally. The great difference which the Honorable Member for Bengal had entirely overlooked was that between the voluntary or involuntary failure to carry out a contract. If the failure was involuntary, no one disputed that it was a case for pecuniary adjustment by a Civil action.

In the famous case of specific performance of a contract in the Merchant of Venice, why did our sympathies go so strongly with Antonio? Because the failure was involuntary—his Argosy had been lost at sea. But suppose that, instead of being lost at sea, the failure had arisen because Antonio, after contracting with Shylock, had sold the cargo to some one else who had tempted him by a higher offer to break with the Jew, it was by no means clear that Portia's judgment would have given us equal satisfaction. The fact was that, where the moral sense said there was fraud, the law ought to punish criminally.

He quite agreed with the Honorable gentleman that we could not exaggerate the importance of making our laws express the moral sense of the community. The political action of a Government ought to reflect the enlightened public opinion of the nation, so ought its laws and the administration of justice to give expression to its moral sense. Now the moral sense clearly drew a line of distinction between a man whose failure to perform his contract arose from an intentional act and a man whose failure was quite involuntary. If any person were to sell him (Mr. Laing) a cargo of iron, and the ship were lost, that would clearly be a case for pecuniary adjustment, and would be fully met by paying the full market price of the iron. But if the iron were not delivered, because the person chose to sell it to another party at a higher price, leaving him (Mr. Laing) in the lurch, there would be fraud in the transaction which deserved punishment. Whether that punishment should be by fine or by imprisonment, was a question of practical discretion, turning on the nature

and magnitude of the contract, the facilities for enforcing it, and other circumstances, the essential thing being that the fraud should not go unpunished. If fraud escaped punishment owing either to the mistaken lenity of the law, or to its cumbrous and imperfect application, a premium was held out to dishonesty and a grievous wrong done to the honest portion of the community. He would ask for no better illustration than the case put by his Honorable friend as to the ryot who had 15 beegahs of land and cultivated only one beegah with Indigo, while the other 14 beegahs were devoted to the cultivation of rice. The Honorable Member said how hard it would be to compel the man to sow his one beegah with Indigo, whilst by doing so the other 14 might be neglected. He (Mr. Laing) would join issue on that point with his Honorable friend, and say without hesitation that it was, what he had called the other day, a spurious sentimentality which would protect that man in doing what was dishonest. If the man wanted to grow his rice, let him keep clear of Indigo cultivation. But if he voluntarily entered into a contract for Indigo cultivation with his eyes open, and afterwards broke it because he found that rice paid better, he (Mr. Laing) must say that that man had committed a fraud, and that punishment ought to be brought home to him in a summary manner, so as to teach him for the future that honesty was the best policy, and to deter others from following his example.

The Honorable Member then said that we gained nothing by the Bill of his Honorable friend (Mr. Beadon), as, whether the proceeding were Civil or Criminal, in each case the party must be summoned and witnesses heard; and he added that, if he (Mr. Laing) had had any practical experience of the administration of justice, he would know that there was little difference between a Civil and a Criminal suit. His experience had been sufficient to teach him this: that if a cabman—to use the illustration of his Honorable friend opposite (Sir Bartle Frere)—broke his contract, you could take him to the nearest Police Magistrate and have him smartly punished in perhaps half an hour; while if your remedy had been, as the Honorable Member for Bengal proposed, by suit for specific performance and Civil action for damages, in the good old days of Lord Eldon you would have been half a century, instead of half an hour, in getting a judgment; and even now with the improvements in the law, you would probably get your injunction, ordering the cabman to drive you to Euston Station, somewhere about 12 months after the train had started, which it had been important for you to catch.

The common case of small contracts for agricultural produce bore the closest analogy to that of the cabman. Failure to perform the contract arose generally from wilful default; it was attended with loss and inconvenience not easily measured by any sum of money which the party making the contract was at all likely to be able to pay; the remedy by a Civil action was, from its expense and delay and the position of the party sued, quite illusory. Therefore, the law most properly provided a summary remedy in a Criminal Court.

This principle the Government would not depart from, or in any way compromise; but if the Bill of the Honorable Member for Bengal could be so amended in Committee as to provide, in addition to this Criminal remedy, a better Civil remedy in cases which did not come within the definition of Criminal cases, he had no objection to it. On the contrary, he should like to see the Civil remedy much more simple and stringent in the class of cases which, from the magnitude of the amount or the length or date of the contract, were not included in the Bill of his Honorable friend (Mr. Beadon). For this reason he should not oppose the second reading of the Bill, though he dissented from almost every word of the speech by which it had been introduced.

MR. SCONCE said, he had no objection to adopt the suggestion which had been made, to refer this Bill to the

same Select Committee which had been appointed to consider and report upon the other Bill. He was sensible that the Council might justly object to entertain and sanction both Bills as if they were independent of each other. He believed that his own object in bringing in this Bill had been sufficiently stated. He wished to adhere to what he conceived the better principle of legislation. He would not now again enter into that matter. He only wished to refer briefly to the remarks of the Honorable and learned Vice-President on that portion of the present Bill which provided for the registration of contracts. First, he would repeat what he had already intimated, that he was not prepared himself to advocate compulsory registration. He did not think that it would tend to the general advantage. But it seemed to be universally felt, especially at this time, that some steps should be taken and some scheme devised to attach validity to agricultural contracts, and furnish some assurance that instruments executed in some parts of the country, in such great numbers, represented true and genuine transactions. The object of this Bill therefore was to empower the Government to appoint Registrars in Agricultural Districts, according to the wants of the public. It was left open to the Government to appoint a Registrar, in any part of a district where the registry of contracts might be felt to be advantageous and was desired by the parties to such transactions ; and, further, he felt that, if we provided a special facility for registering those contracts, we should, at the same time, secure some reasonable proof that the recited advances had been received and that the contracts had been executed.

As to the details of the several Sections, he would not now further allude to them. He would only repeat that, if the Council should think fit to pass the Bill for a second reading, he was willing to adopt the suggestion of the Honorable Member of Government (Mr. Beadon), of referring it to the same Committee and upon the same footing as his own Bill had been referred.

The question being put, the Council divided—

Ayes 8.	*Noes* 2.
Sir Charles Jackson.	Sir Robert Napier.
Mr. Erskine.	The Vice-President.
Mr. Sconce.	
Mr. Forbes.	
Mr. Harington.	
Mr. Laing.	
Mr. Beadon.	
Sir Bartle Frere.	

So the Motion was carried and the Bill read a second time.

Mr. SCONCE then moved that the Bill be referred to the Select Committee on the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce," with an instruction to submit a preliminary Report.

Agreed to.

SUGAR DUTY (NORTH-WESTERN PROVINCES.)

Mr. HARINGTON moved the second reading of the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces.)"

The Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

Mr. HARINGTON moved that the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" be recommitted to a Committee of the whole Council with a view to consider the amendments which had been proposed by the Select Committee.

Agreed to.

Chapter I consisted of definitions.

The two following Clauses, taken from the Penal Code, were introduced after the definition of British India, on the Motion of Mr. HARINGTON :—

"The words 'Special Law' shall denote a law applicable to a particular subject.

The words 'Local Law' shall denote a law applicable only to a particular part of British India."

The Clerk of the Council was instructed to number the several Clauses in this Chapter as separate Sections.

The Clause defining "Courts of Session" gave rise to some conversation.

The further consideration of the Bill was ultimately postponed, so as to allow the Members for Bombay and Madras to enquire of their respective Governments by telegram as to the expediency of dispensing with the Assistant Sessions Judges in the former Presidency, and with the Subordinate Criminal Courts and the Courts of the Principal Sudder Ameens in the latter.

SUGAR DUTY (NORTH-WESTERN PROVINCES.)

MR. HARINGTON moved that the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)" be referred to a Select Committee consisting of Mr. Laing, Mr. Erskine, and the Mover.

Agreed to.

MR. HARINGTON said that as it was important that this Bill should be passed into law as soon as possible, he begged to move for the suspension of the Standing Orders with a view to his moving an instruction to the Select Committee which had just been appointed, to submit their report within four weeks.

MR. LAING seconded the motion, which was put and carried.

MR. HARINGTON then moved an instruction to the above effect.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE moved that the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)" be referred to a Select Committee consisting of Mr Beadon, Mr. Harington, and the Mover.

Agreed to.

The Council adjourned.

Saturday, April 6, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq., and
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.
H B Harington, Esq.,	
H. Forbes, Esq.,	

PUBLIC CONVEYANCES.

THE CLERK presented to the Council a Petition signed by 801 Inhabitants of Calcutta and its Suburbs, regarding the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. SCONCE moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

BREACH OF CONTRACT.

THE CLERK presented a Petition signed by 207 Ryots, Inhabitants of Nuddea, Jessore, Pubna, and Moorshedabad, against the Bill "to provide for the punishment of Breach of Contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

MR. BEADON moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK presented a similar Petition signed by 28 Ryots, Inhabitants of Nuddea, Jessore, Pubna, and Moorshedabad against the same Bill.

MR. BEADON moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK reported to the Council that he had under the 27th Standing Order certified on the back of a Petition signed by 624 Ryots and Mahajuns of Kishennuggur, Pubna, Moorshedabad, and Jessore, in the Province of Bengal, relative to the same Bill,

that, in his judgment, the Petition was not framed in accordance with the 22nd Standing Order, forasmuch as it was not couched in temperate language, and did not conclude with a distinct prayer.

The VICE-PRESIDENT said that, according to Standing Order No. 22,

"Petitions to the Legislative Council must relate to matters connected with the business of the Council. Every Petition shall be superscribed 'to the Honorable the Legislative Council of India,' and shall be dated and signed by the Petitioner or Petitioners. It shall be in respectful and temperate language, and shall conclude with a distinct prayer."

By Standing Order No. 27, it was declared :—

"If in the judgment of the Clerk the Petition be not framed in conformity with Order No. XXII, or if he have reason to doubt the authenticity of any signature thereto, he shall certify the same on the back of the Petition, and shall report the fact to the Council; in which case the Petition shall not be received by the Council, except upon the Motion of a Member.

So that, unless any Motion was made to receive this Petition, according to the latter Standing Order to which he had referred it could not be received.

CRIMINAL PROCEDURE.

The CLERK presented a Petition from the British Indian Association, relative to the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

Mr. HARINGTON said, when the Council resolved itself into a Committee on the Bill, he proposed to move that the Clerk be requested to read this Petition.

PARSEES.

The CLERK reported to the Council that he had received a communication from the Home Department, forwarding a communication from the Government of Bombay, and the correspondence received therewith, on the subject of the proposed Draft Code of law for the Parsee community.

Mr. ERSKINE moved that the communication be referred to the Select Committee on the subject.

Agreed to.

LICENSING OF ARTS, TRADES, AND DEALINGS.

The CLERK reported to the Council that he had received a communication from the Financial Department, regarding the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a license."

STAGE CARRIAGES.

Mr. HARINGTON presented the Report of the Select Committee on the Bill "for licensing and regulating Stage Carriages."

MINORS.

Mr. SCONCE presented the Report of the Select Committee on the Bill "to amend the law relating to Minors."

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Mr. HARINGTON moved that the Clerk be requested to read the Petition of the British Indian Association, which had this day been presented to the Council.

The Motion was carried, and the Petition read accordingly.

The words "except the Settlement of Prince of Wales' Island, Singapore, and Malacca" were added to the definition of "British India," on the Motion of Sir Charles Jackson.

The definition of the words "Moveable Property" was substituted by the definition of the same words as given in the Penal Code, on the Motion of the same Member.

The definition of the words "Court of Session" being read by the Chairman—

MR. HARINGTON said, before they resumed the consideration of this Clause which had given rise to a lengthened discussion, and to some difference of opinion at the last meeting of the Committee, he might mention that, in consequence of a communication which he had just received from the Executive Government, it was his intention to move on Saturday next the first reading of the Bills, presented to the Council by the Select Committees on the Criminal Procedure Bills, for constituting Courts of Civil and Criminal Judicature. If these Bills should pass into law, the effect would be that the Courts of the Assistant Sessions Judges of the Presidency of Bombay, and the Subordinate Criminal Courts and the Courts of the Principal Sudder Ameens of the Madras Presidency, would be abolished as separate classes of Criminal Courts, and uniform classes of Criminal Courts would be established in the three Presidencies. Under these circumstances, it seemed desirable to allow the Criminal Courts of the Madras and Bombay Presidencies to remain for the present subject to any provisions which might be introduced into the Procedure Code in respect to their powers of punishment, and if the Committee concurred in this view, they would perhaps permit the consideration of the Clause to stand over.

The consideration of the Clause was accordingly postponed.

The definition of the words "Magistrate of the District" was passed after a verbal amendment.

The following definition of the words "year" and "month" was added to Chapter I, on the Motion of the Chairman :—

"Wherever the word 'year' or the word 'month' is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar."

Before Chapter I was passed by the Committee—

SIR CHARLES JACKSON suggested the necessity of introducing a definition of the words "Police Station."

Ultimately, the consideration of this question was reserved until after the Committee had gone through the Code, when Sir Charles Jackson said that he should probably propose a definition of those words.

Chapter II related to the Jurisdiction of the Criminal Courts.

Section 2 was passed after a verbal amendment.

Section 3 provided by what Courts the offences mentioned in the Schedule annexed to the Act were triable, and within what limits such Courts might pass sentence.

A trifling amendment was made in the introductory part of the Section, on the Motion of Mr. Erskine.

The Section proceeded to describe the powers of the Court of Session as follows :—

"The Court of Session. Death (subject to confirmation by the Sudder Court). Transportation, imprisonment for 14 years, and fine to an unlimited amount, or, both transportation and fine, or imprisonment and fine in cases in which both punishments are authorized by Act XLV of 1860 (The Indian Penal Code.)"

Several amendments were proposed and carried, which made the above run as follows :—

"The Court of Session. Death (subject to confirmation by the Sudder Court). Transportation, imprisonment of either description for 14 years, including such solitary confinement as is authorized by law, or fine to an unlimited amount, or both transportation and fine or imprisonment and fine in cases in which both punishments are authorized by the Indian Penal Code."

The following addition was made to the above, on the Motion of Mr. Harington :—

"In cases in which, according to the Indian Penal Code, forfeiture of property may be adjudged, the Court of Session may adjudge such forfeiture in addition to the sentence."

MR. ERSKINE proposed to move an amendment to the effect that the words "Court of Session" should not include the Courts of Assistant Sessions Judges in the Bombay Presiden-

cy, in respect to whose powers a special reservation was made in Section 359 of the Act.

After some conversation, the consideration of the proposed amendment was postponed.

After some amendments in the Clauses describing the powers of the Magistrate of the District and of Subordinate Magistrates or Officers authorized to exercise any of the powers of a Magistrate, the following addition was made to Section 3, on the Motion of Mr. Erskine :—

"No sentence of solitary imprisonment under Section 73 of the Indian Penal Code shall be passed by any Court inferior to an Officer exercising the powers of a Magistrate."

THE CLERK of the Council was authorized to substitute the words "the Indian Penal Code" for the words "Act XLV of 1860 (The Indian Penal Code)" wherever necessary.

MR. HARINGTON moved the introduction of the following new Section after Section 3 :—

"The local Government may invest any person with the powers of a Magistrate or of a Subordinate Magistrate of the first or second class, as described in the last preceding Section, with a view to the exercise by such person of such powers under this Act or under any special or local law."

Agreed to.

Section 4 was passed after amendments.

Sections 5 and 6 were passed as they stood.

Sections 7 to 10 were passed after verbal amendments.

Sections 11 and 12 (relating respectively to the receiving of stolen property, and to the unlawfully receiving or having in possession criminally misappropriated property) were incorporated into one Section with necessary modifications and verbal amendments.

So likewise were Sections 13 and 14 (relating respectively to escape from lawful custody under sentence, and to return from transportation) incorporated into one Section, which provided also for breach of license under the Penal Servitude Act.

Sections 15 and 16 were passed after verbal amendments.

Section 17 was passed as it stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

ROHILCUND DIVISION.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the General Regulations and Acts."

Agreed to.

Section I provided as follows :—

"The tracts of country described in the Schedule to this Act are hereby removed from the jurisdiction of the Courts of Civil and Criminal Judicature, and from the control of the Offices of Revenue constituted by the Regulations of the Bengal Code and the Acts passed by the Governor-General of India in Council and the Legislative Council of India as well as from the system of procedure prescribed for the said Courts and Offices by the Regulations and Acts aforesaid ; and no Act hereafter passed by the Legislative Council of India relative to the constitution or procedure of the said Courts and Offices shall be deemed to extend to any part of the said tracts, unless the same be specially named therein : provided that nothing herein contained shall extend to or affect any case now pending in any Court or Office."

MR. BEADON asked, what the effect of the Bill would be as regarded the Acts of the Government of India? Would it be to make the tract of country to which the Bill related, not subject to the Penal Code for instance, or to the Codes of Civil and Criminal Procedure?

MR. HARINGTON said, the Bill related only to the constitution of the Courts and to procedure, and would leave the substantive law intact. It would not remove the tract of country to which it related from the operation of the Penal Code or the Law of Limitation, for instance ; but the new Code of Criminal Procedure upon which the Council was now engaged would not take effect in that tract, nor indeed would it take effect in any Non-Regulation Province, unless it was specially

extended thereto by an order of the local Government. The Bill had been framed after the model of the Act lately passed relating to a portion of the Chittagong District.

After some further discussion, the consideration of the Bill was postponed, and the Council resumed its sitting.

PORT DUES (AMHERST.)

The Order of the Day for a Committee of the whole Council on the Bill "for the levy of Port-Dues in the Port of Amherst" was postponed.

PENAL CODE.

THE VICE-PRESIDENT said, when the Penal Code was before the Council, it was considered that the translations of it into the several native languages might be made in sufficient time to enable it to be brought into effect on the 1st of May 1861. That day was therefore introduced into the Code as the date from which it should take effect. But from all the information which he had been able to obtain on the subject, it appeared that the Code had not yet been translated into all the native languages. He believed no one was to blame for this, as it was a matter of very great difficulty, and no doubt every endeavor had been made to complete the translations as quickly as possible. He found that even in Bengal the whole of the translation could scarcely be published in the Gazette before the 1st May 1861. He thought it would not be right to allow the Code which altered the whole Criminal Law of the country, to take effect before it was translated and published for the information of the natives of India, and more especially before the native Judges and Officers who would have to administer justice under this Code should have had ample time thoroughly to understand it. For this reason he thought it proper that the date from which the Code would take effect should be postponed. It appeared to him that the 1st of January 1862 would not be too late a day for its coming into operation, as in his opinion it ought to come into operation at the same time all over the country, and not piecemeal as the translations might be completed.

The question then was, whether the 1st of January 1862 would be too late a period to fix for the commencement of the Code. He thought that, by fixing that date, there would be time to complete the Code of Criminal Procedure, and for the native Judges to study it. He therefore proposed to suspend the Standing Orders for the purpose of bringing in and passing through all its stages, a Bill to postpone the operation of the Code until the 1st January 1862. This was April, and there was scarcely a month before the Code, as it now stood, would come into operation. He thought that, if any alteration were made, it ought to be made at once, so as to give time for communicating to distant parts of the country that its operation had been postponed for a time. He begged to move therefore that the Standing Orders be suspended to enable him to introduce and carry through its several stages a Bill "to alter the time from which the Indian Penal Code shall take effect."

SIR BARTLE FRERE seconded the Motion.

MR. HARINGTON said, before the question was put for the suspension of the Standing Orders to enable the Honorable and learned Vice-President to bring in a Bill to postpone the introduction of the Indian Penal Code, he must express a hope that the Honorable and learned Vice-President would not press the second reading of the Bill to-day, but would allow the second reading to lie over until next Saturday. He (Mr. Harington) was anxious to communicate with the Honorable the Lieutenant-Governor of the North-Western Provinces, and to ascertain from His Honor what would be the effect of the Bill in those Provinces in connection with the new Police which was now being organized in them. If time were allowed him,

he would communicate at once with the Honorable the Lieutenant-Governor by Electric Telegraph, and he might hope to receive an answer before the next meeting of the Council. It was right he should mention that an admirable translation of the Penal Code in the Oordoo language, which was the vernacular of the North-Western Provinces, and the language of all the Courts in those Provinces, as it was, he believed, to a great extent of the Courts in the Punjaub also, was now being published under the authority of the Government of the North-Western Provinces. A considerable portion of the translation had already been printed, and it was confidently expected that the whole would be completed, and that copies of the translation would be in the hands of all the Government Officers, and would be available to the public generally at a moderate price on or about the 15th Instant. This translation of the Code, which had undergone a careful revision by the Honorable the Lieutenant-Governor of the North-Western Provinces, who was known to be an accomplished Oriental Scholar, would have a copious and skilfully prepared index attached to it, which would materially facilitate reference to any part of the Code. He had no reason to believe that the Honorable the Lieutenant-Governor or the Officers under him had expressed, or that they felt any desire that the introduction of the Code should be postponed beyond the date now fixed for its coming into operation, and he thought he might state that the whole of the Officers in the North-Western Provinces were prepared for the introduction of the Code on that date. He knew that sometime ago the Junior Civil Servants and the Members of the Uncovenanted branch of the service in the North-Western Provinces, who had to undergo an examination according to the higher or lower standard, were warned that they would be examined in the Penal Code, and they had been preparing themselves accordingly. He feared that great confusion would be caused, and that much inconvenience would be experienced in the North-Western Provinces, if, at this late period, a Bill were introduced, absolutely postponing the introduction of the Code for a lengthened period. This inconvenience would be particularly felt in the department of Police, which, it might be truly said, would have no proper law for the guidance of its Officers until the Penal Code and the new Code of Criminal Procedure came into operation. Under these circumstances, he ventured to express a hope that, if a Bill were necessary to postpone the introduction of the Penal Code beyond the date now fixed for its coming into operation, that was to say, the 1st May next, the Bill would be made of a permissive character only, and that, while it allowed the introduction of the Code to be postponed until a certain date, it would empower the local Governments to bring it into operation within their respective Governments on an earlier date if they thought proper, giving timely notice of their intention to do so.

MR. BEADON said, he had no hesitation in voting in support of the Bill for postponing the operation of the Penal Code. But he ventured to suggest whether an earlier date than the 1st of January 1862 might not sufficiently answer the purpose intended. If the operation of the Code were postponed at all, it was better that it should come into force on the same date throughout all India than that it should come into force on the 1st May 1861 in one part of India, and on another date in another. He thought that a period of four months beyond the time originally fixed, would be quite sufficient to complete the translations of the Code where they were incomplete, and give abundance of time to the officers who would have to administer the Code to make themselves masters of it. He therefore ventured to suggest that the Act be postponed until the first September next. This would give an additional four months, within which period the Code of Criminal Procedure would also be passed, and its translations completed without difficulty.

THE VICE-PRESIDENT said, he should not object to deferring the operation of the Penal Code to the 1st of September 1861 instead of the 1st January 1862, if he were satisfied that the Code could be translated in sufficient time to enable the native Judges to become thoroughly acquainted with it. He understood from the Honorable Member of the North-Western Provinces that the officers were to be examined in the Penal Code. It appeared to him (the Vice-President) that it would be better if the examination took place previously to the Code coming into operation, than by allowing the officers to be examined in the Code after it came into operation.

MR. HARINGTON said that the examinations he referred to, were the periodical examinations to which the junior Civil Servants and others were subjected.

THE VICE-PRESIDENT said, with regard to the native Judges they ought not to be called upon to administer the Code before they had had time to study it. He thought it would be a great reproach to this Council if it were allowed to come into force before it had been translated into the languages of the people to be affected by it, and studied by the Native Judges who would have to administer it. He therefore thought that the translations of the Code ought to be published sufficiently to enable the native Judges thoroughly to understand it. He believed that a representation had been received by the Government of India from the Madras Government as to the impossibility of the translations of the Code being completed before the 1st of May next.

MR. BEADON said, the communication from the Madras Government was to this effect. They thought that it was intended that the Penal Code and the Code of Criminal Procedure should be brought into operation on the same date, and they said that although the translations of the Criminal Code would be completed in time, yet if the operation of both Codes were to commence on the same date, some postponement would be necessary, as the Code of Criminal Procedure could not possibly be translated by that date. He held in his hand the advertisement which appeared in the Gazette of this day, which announced that the Oordoo translation of the Penal Code—and the Oordoo was the *lingua franca* of India—would be ready for publication on the 15th of this month. That would give the native Judges four and a half months' time to consider the Code. He was told that the Bengalee translation of the Code would be ready by the 1st of next month; that the Bombay translations had passed through the press; and that the Madras translations would shortly be printed and published. If therefore, the 1st of September were fixed for the commencement of the Code, every native Judge would have it in his power to make himself master of it, both in the Vernacular language of his District and in the Oordoo.

MR. FORBES said, the Oordoo was certainly not the *lingua franca* of India, for in the Madras Presidency it was not understood at all. To facilitate the translation of the Penal Code in anticipation of its being passed, he had sent a few copies of Mr. Edmonstone's Oordoo translation to Madras, where however the translators found it of no use, so different was it from the Hindoostanee spoken there. Therefore the Oordoo translation to which the Honorable Gentleman (Mr. Beadon) referred as the *lingua franca* of India, would not be of any service whatever to the native Judges in the Southern Presidency. There were five different languages into which the Code required to be translated in that Presidency, and the Members of the Civil Service were the only persons acquainted with those languages, whose services could be made use of as Government Translators. The office of translator was however so ill-paid that the gentlemen who were thus employed had all some other offices, and two of them filled the laborious offices of Secretary to the Board of Revenue and Registrar to the Sudder Court, and it was but little time therefore that they had for their translators' duties. This was the sole cause of the delay

that had occurred in the translation of the Penal Code at Madras. In order that the translation of the Code of Criminal Procedure might be expedited as much as possible, he had already sent down copies of it for the purpose of being distributed and put at once into the hands of the translators.

SIR CHARLES JACKSON said, there seemed to him to be two questions for consideration. First, whether the operation of the Code should be postponed, and second, to what time it should be postponed. Now that it should be postponed, he thought was clear. If the translations in Bengal and Madras were not completed then, this Code could not be known to the people of the country, and certainly could not be known to the native Magistrates and Judges who would have to administer the law on the 1st of May next. It was preposterous to suppose that the native Magistrates would be able to administer a law which they had never seen or with the terms of which they had not had time to make themselves acquainted. Then as to the time to which it should be postponed, he thought it should be postponed to such a time as would enable all the Judicial Officers, natives and others, who would have to administer it, to become acquainted with its provisions, and that it was desirable to postpone it for such a period that the Code of Criminal Procedure might be passed and translated, so as to allow both Codes to come into force at the same time. He wished the Penal Code to have fair play, and he did not think that would be the case if it was brought into operation on the 1st of May. It would be difficult to work the Penal Code without the Code of Criminal Procedure, which was part and parcel of it; and it would be very undesirable to work it with the old system of Criminal Procedure to which it was not adapted.

MR. ERSKINE said that he had no wish to oppose the Motion which had just been made, if on general grounds there was reason to desire that the introduction of the Penal Code should be postponed. But with reference to what had fallen from the Honorable Member of Government (Mr. Beadon) as to the general utility of the Oordoo version of the Code, he might mention that within the last day or two he had received a letter from the Bombay Government, intimating that it would be of no service to them, and that they did not require any copies of it. The Honorable Member (Mr. Beadon) was, he believed, quite justified in stating that the versions of the Penal Code required for general use in the Bombay Presidency, had already been satisfactorily completed there. He (Mr. Erskine) believed indeed that they had already been published in the Government Gazette. He had no reason to suppose that the Bombay Government was in other respects unprepared to bring the Code into operation from the date originally specified. At the same time, although he had not been aware that this Motion would be made to-day, and had not therefore been able to make a special reference on the subject, he thought he might undertake to say that they would not in Bombay greatly object to a postponement. It was, no doubt, desirable that the preliminary arrangements for giving effect both to the Penal Code and to the Procedure Code should be complete in all parts of the country before any attempt was made actually to enforce them. And with the Procedure Code especially—which would introduce great changes—he thought they should hasten slowly. He would only further remind the Council that the statement of the Honorable Member for the North-Western Provinces as to the effect which a delay in introducing these Codes would have on the new Police in the North-West, was deserving of every attention, as the inconvenience to be apprehended was apparently great. He (Mr. Erskine) would suggest on this account that the new date to be fixed by this Bill should be the earliest that could be named consistently with other objects.

THE VICE-PRESIDENT said, he certainly thought that under all the

circumstances of the case the 1st of January would not be too late a period to which to defer the operation of the Penal Code. In all probability the Code of Criminal Procedure would not be passed next month. Not even one quarter of it had been settled by the Council to-day; and when it was passed, he understood that it would require to be translated by gentlemen of the Civil Service at Madras. These gentlemen had not yet completed the translation of the Penal Code in consequence of their having other duties to perform, and he thought it would not be fair to put an undue pressure of work upon them. He believed also that the Doorga Poojah holidays was the only portion of the year during which the Judges would have an opportunity of giving their attention to and studying the Code. In addition to that, there were a number of Regulations existing in Bengal, Madras and Bombay, known as local Laws, which would have to be repealed as soon as this Code of Procedure was completed. Many of these Regulations applied not only to crimes and offences, but also to Procedure, and it would be very difficult to separate a particular part of a Regulation, and to say that that particular part should be repealed now, and that another part of it should be repealed as soon as the Code of Criminal Procedure was completed. The repealing Act had not yet been completed, although great progress had been made in it by the learned Clerk Assistant of the Council, and it could not be completed until the Code was passed. The Bill therefore had to be brought in; and after it was read a first and second time and referred to a Select Committee, it would require to be published for three months for the consideration of persons competent to offer an opinion on the subject. Otherwise we would have to suspend the Standing Orders so as to pass the Bill for repealing those various Regulations, and that Bill would require to be translated and to come into operation at the same time with the Codes, so that one uniform system might be adopted throughout India. He did not think that the difference of time between the 1st of September and the 1st of January next, was so material compared with the advantage of bringing into force a uniform system. He thought it would be better that the whole system should be completed, so as to come into operation at the same time. He did not think we should fix an earlier date than one on which we could pass all Bills and bring them into operation together. The question then was, whether we should suspend the Standing Orders with a view of passing to-day the Bill for postponing the Penal Code, or wait until the Honorable Member for the North-Western Provinces had an opportunity of communicating with his Government on the subject. If it were not passed to-day, we should lose a week; and if we left it until next Saturday, the question would arise whether a fortnight would be sufficient time to communicate to the whole of the Judges that they were to go on with the old law, and not with the Penal Code, until the 1st January next. He (the Vice-President) thought it would be inconvenient to postpone the Code unless such a communication could be made to all the Judges. Otherwise, some of the Judges who could not be communicated with, might be acting on the Penal Code, and their orders would be illegal, because the operation of the Code would be postponed before they knew of its postponement. He therefore proposed to proceed with the Bill to-day.

MR. HARINGTON said, he hoped he might be allowed to offer a few more remarks on the Bill now proposed to be introduced. He was not anxious to cause delay, but he would certainly like to have an opportunity of communicating with the Honorable the Lieutenant-Governor of the North-Western Provinces before the Bill became law. At the time that they passed the recent Act for regulating the Police; they had in view that the Penal Code would come into operation from the 1st May next, and they fully expected that the Code of Criminal Procedure would be completed, and

that it would be introduced on the same date. This was still quite possible. The consequence was that the Police Act was made to depend in a great measure upon the Penal Code and the Code of Criminal Procedure as regarded the duties to be performed by the Police, and the manner in which those duties were to be performed. Without these two Codes the Police Act would be little more than a skeleton law, and as he had already observed the Police would have no proper law for their guidance.

Sir CHARLES JACKSON observed that the new Police might carry on their duties under the existing Regulations.

Mr. HARINGTON resumed, that was just what they desired to avoid. An entirely new system of Police was about to be introduced, the principal feature of which was the separation of Police and Judicial functions. The old Police were being removed and a new class of men were being appointed in their stead, and it was obviously advisable that the new men should from the first have for their guidance the laws which it had been determined should be introduced, and that they should conduct their duties in accordance with them rather than that they should have to learn the old laws and administer them and then, after a few months, be required to make themselves acquainted with a new set of laws and to introduce and carry on an entirely different system. He thought that the Honorable the Lieutenant-Governor of the North-Western Provinces would scarcely have consented to the immediate introduction of the new Police system had he supposed that the Police appointed under it would be required for a time to act under the old Police Regulations. It appeared to him (Mr. Harington) that this would scarcely be fair to the newly appointed Inspector General of Police in the North-Western Provinces, and to the other officers in the Department and if, therefore, the proposed Bill should become law and be made general in its application, he certainly thought that it would be the duty of the Council to consider what provision should be made to enable the Police in the North-Western Provinces properly to discharge their duties according to the system now being introduced, and not according to the old system. He should, of course, be happy to assist in framing a law for this purpose, but something should be done at once. No doubt it would be better and more convenient if the new Codes could be introduced at one and the same time throughout India; but this did not appear to him to be a sufficient reason for postponing the introduction of those Codes into any part of the Country where the postponement would cause inconvenience. He believed that this would be the case in the North-Western Provinces. He had already mentioned, that for any thing he knew to the contrary, they were quite prepared for the introduction of the Penal Code in those Provinces on the date originally fixed for its introduction, and if the present Bill were passed he should be glad if the suggestion which he had made that power should be given to the local Governments to introduce the Code on an earlier date than that mentioned in the Bill, could be adopted.

Sir BARTLE FRERE said, he was not sure if the Honorable Member for the North-Western Provinces had not mixed up two different matters. The Penal Code, as it now stood, would come into operation on the 1st of May. As to the Code of Criminal Procedure, the very earliest date would be the 1st of September, on which, if we used our utmost exertions, we could possibly make it come into operation, allowing sufficient time for its translation into the several native languages. In the meantime under any circumstances, supposing the Penal Code was not postponed, the Police would be in the same state as they now were. The remedy that he would suggest was this. As soon as the Clauses of the Procedure Code relating to the Police were settled, if it were found that any difficulty were experienced in the

North-Western Provinces, the Council should pass a temporary Act giving effect to those Clauses of the Code until the date fixed for the whole Code coming into general operation. That would get over the difficulty as regards the Police.

MR. HARINGTON said that it was not only the Procedure to which he referred; he had also in view the offences of which the Police should take cognizance.

MR. FORBES said that the Madras Police had a law of Procedure of its own which had been found to work well, and perhaps the Honorable Member for the North-Western Provinces might, as a temporary measure, adapt the Clauses relating to it to the North-Western Provinces:

THE VICE PRESIDENT said, he thought that that was certainly the most advisable course to follow with reference to the Police. He saw no objection to the insertion of any particular Clauses of the Penal Code or the Code of Criminal Procedure in a temporary Act, so that it might be passed and come into force whenever it might be considered necessary. The only question now was, whether we should allow the Penal Code to come into force by the 1st of May before the whole system might be completed and thoroughly understood. He should therefore press his Motion for the suspension of the Standing Orders, to enable him to bring in and proceed with the Bill.

The Motion was put and carried, and the Bill read a first time.

The Standing Orders having already been suspended, the Council then resolved itself into a Committee on the Bill which was passed without amendment.

The Council having resumed its sitting, the Bill was reported, after which it was read a third time and passed, and Mr. Beadon was requested to take it to the Governor-General for his assent.

The Council adjourned.

Saturday, April 13, 1861.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, in the Chair.

Hon'ble C. Beadon,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harington, Esq.,	Hon'ble Sir C. R. M.
H. Forbes, Esq.,	Jackson.
A. Sconce, Esq.,	

PENAL CODE.

THE PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "to alter the time from which the Indian Penal Code shall take effect."

CATTLE TRESPASS.

THE CLERK presented to the Council a Petition from the Indigo Planters' Association, praying for certain amendments in Act III of 1857 (relating to Cattle Trespass).

MR. BEADON moved that the Petition be printed.

Agreed to.

PARSEES.

THE CLERK presented a Petition from the Parsee Inhabitants of Calcutta in favor of the passing of the draft Code of law sent up by the Parsee Inhabitants of Bombay.

MR. ERSKINE moved that the Petition be referred to the Select Committee on the question to which it related.

Agreed to.

PUBLIC CONVEYANCES; AND MASTERS AND SERVANTS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement on the subject of the regulation of Public Conveyances and the relations of Master and Servant.

MR. SCONCE moved that the communication be printed.

Agreed to.

SMALL CAUSE COURTS.

MR. BEADON postponed the presentation of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.)"

CONSTITUTION OF COURTS.

The Order of the Day being read for the first reading of the Bill "to constitute Courts of Civil Judicature"—

MR. HARINGTON said, this Bill, and the Bill which stood next to it in the Orders of the Day for a first reading, namely, the Bill "to constitute Courts of Criminal Judicature," were prepared, as the Council were aware, by the Select Committees to which the Codes of Civil and Criminal Procedure, sent out from England, were originally referred. The Bills were presented to the Council so far back as the month of April 1859, since which nothing had been done towards passing them into law. The receipt of a Despatch from the Right Honorable the Secretary of State for India had, he believed he might say, been to some extent the cause of the delay. When he gave notice on Saturday last of his intention to move to-day the first reading of both Bills, he fully expected that the Indian Penal Code would come into operation on the 1st May next, and he had great hopes that the Code of Criminal Procedure, if not completed and capable of being introduced on the same day, would pass into law and might take effect after no long interval of time; and as the communication which he mentioned he had received from the Executive Government appeared to have removed the only obstacle which previously existed to their proceeding with the Bills for constituting Courts of Civil and Criminal Judicature, it seemed very desirable that the Courts which were to carry out the provisions of the two Codes should be constituted on a uniform system in the several Presidencies with as little delay as possible. The Council, however, determined on Saturday last that the introduction of the Penal Code, and along with it the Code of Criminal Procedure, should be deferred until the 1st January next, and an Act was passed to that effect, the Governor-General's assent to which had just been communicated. There was therefore no longer the same necessity for their hurrying on the Bills for the constitution of the Courts, and as it seemed very advisable that these Bills should undergo further revision by a Select Committee in reference to the communication from the Executive Government to which he had already referred, and to other circumstances which had occurred since the Bills were prepared, instead of moving that they be read to-day a first time, he begged to move that they be referred back to a Select Committee consisting of Mr. Forbes, Mr. Sconce Mr. Erskine, and the Mover, and that the Select Committee be instructed to propose any alterations in them which they might deem necessary, and to make an early report. Should this Motion be adopted, it was his intention to move in Committee certain additions to the Bills to make them more complete, as well as the insertion of a Section to repeal all the existing laws relating to the constitution of the Courts and the appointment, removal, and duties of their Ministerial Officers.

Agreed to.

GRANTS OF IMMOVEABLE PROPERTY

SIR BARTLE FRERE, in moving the first reading of a Bill "for securing grants of immoveable property made by the State," said that this Bill was intended to make the same provision in respect to real property granted by the State, which had been made by

Act VI of 1849 with regard to Military and Naval Pensions and superannuation allowances. The object of the Bill was to enable the State, as it were, to entail landed property on the heirs of those to whom it had been granted for eminent services, and to give the holders of such property the same privileges as were conferred by the other Act. The Bill was introduced at the instance of the Honorable the Lieutenant-Governor of the North Western Provinces, whose letter was included in the papers on the subject, which were ordered by the Council on the 29th September last to be printed. In that letter were distinctly set forth the reasons for the introduction of the Bill, and he would not therefore trouble the Council by referring to them at present.

The Bill was read a first time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter"—

MR. HARINGTON said that, in the absence of the Honorable and learned Chief Justice, he (Mr. Harington) felt sure that the Council would agree with him that they ought not to go on with this Bill to-day, and he begged therefore to move that the consideration of the Bill be postponed until Saturday next.

Agreed to.

ROHILCUND DIVISION.

MR. HARINGTON moved that the Order of the Day for the adjourned Committee of the whole Council on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts" be also postponed. He had made a communication on the subject of the Bill to the Honorable the Lieutenant-Governor of the North-Western Provinces, and he wished to receive His Honor's reply before the consideration of the Bill was resumed.

Agreed to.

PORT-DUES (AMHERST).

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-Dues in the Port of Amherst."

Agreed to.

The Bill passed through Committee after the insertion of the "1st day of July 1861" as the date of the commencement of the Act; and the Council having resumed its sitting, the Bill was reported.

REPEAL OF REGULATIONS AND ACTS (CIVIL PROCEDURE).

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MINORS.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to Minors;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

The Council adjourned.

Saturday, April 20, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. B. Harington, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	H. Forbes, Esq.,
Hon'ble S. Laing,	A. Sconce, Esq., and
	C. J. Erskine, Esq.

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from certain ryots and others of Jungypore against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, manufacture, carriage, and delivery of Agricultural produce."

SIR BARTLE FRERE moved that the Petition be printed and referred to the Select Committee on the Bill.

STAGE CARRIAGES.

THE CLERK presented a Petition from Mr. William Greenway, proprietor of the Inland Transit Company, concerning the Bill "for licensing and regulating Stage Carriages."

MR. HARINGTON said, as this Petition related to a Bill which was in the Orders of the Day for a Committee of the whole Council, he proposed to move, when they went into Committee upon the Bill, that the Petition be read.

EMIGRATION.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding papers connected with the question as to what the duties of the Protectors of Emigrants at Indian Ports should be, and whether the duties ought to be defined by law.

CORPORAL PUNISHMENT.

THE CLERK reported that he had received a communication from the Foreign Department, forwarding papers relative to the infliction of Corporal Punishment in Oude.

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill "to provide for the punishment of flogging in certain cases."

SMALL CAUSE COURTS.

The Order of the Day being read for the presentation of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)"—

MR. HARINGTON said, in the absence of the Honorable Member of Government who was in charge of this Bill, and who, as all must have heard with deep regret, was prevented by severe indisposition from attending in his place to-day, he had the honor to present the preliminary Report of the Select Committee on the Bill, accompanied by a separate Minute by the Honorable Member for Bengal on the subject of the Bill, and to give notice that on Saturday next he should move that the Standing Orders be suspended with a view to the Bill passing through its remaining stages on that day.

PORT-DUES (CONCAN.)

MR. ERSKINE presented the Report of the Select Committee on the Bill "for the levy of Port-dues in the Ports of the Concan."

CATTLE TRESPASS.

MR. SCONCE said that, as he had not given notice, it would be necessary for him to move for a suspension of the Standing Orders to enable him to introduce a Bill "to amend Act III of 1857 (relating to trespasses by cattle)." The object of the Bill was to provide a penalty for wilful trespass by cattle. It had been long known and admitted by the Council that, on the enactment of Act III of 1857, a practical omis-

sion was made with respect to the crime of trespass by cattle wilfully caused on any land or crop, in not providing a penalty for that offence. Section 17 provided how any such offence should be dealt with. The words of the Section were :—

"When any person commits mischief by causing cattle to trespass on any land, the penalty provided for such offence may be adjudged on the complaint of any person authorized to seize cattle under Section II of this Act, or of any person who may have made advances for the cultivation of the land and delivery of the produce; and any fine which shall be so adjudged, may be recovered by sale of the cattle, by which the trespass was committed, or any portion of them, whether the cattle were seized in the act of trespassing or not, and whether such cattle are the property of the person convicted of the offence, or were only in his charge, when the trespass was committed.

According to that Section the penalty provided for the offence might be adjudged. But it happened that, so far as Act III of 1857 was concerned, the offence of causing a wilful trespass by cattle was left to be dealt with by subsequent legislation. This defect had been long recognized, and the delay in bringing in a separate Bill to remedy the defect had arisen from the expectation of the early passing into law of the Penal Code which fully provided for such cases. It was true that the Penal Code had been passed; but its operation had been postponed from the 1st of May to the 1st of January next. Under these circumstances, it seemed to him to be important to give early effect to a portion of the Penal Code which was intended to remedy a defect in the present law, and he proposed to bring in a Bill embodying certain of the Sections of the Code that applied to the offence of wilful trespass. The Sections were taken from the head of "Mischief." The Council might have read the Petition of the Indigo Planters' Association presented last week, in which this and other amendments of the Cattle Trespass Act were proposed. Accordingly the first Section of the Bill which he was about to introduce provided that, when there was a case of wilful cattle trespass, as determined by the Penal Code, the party on conviction, might be imprisoned for three months, or subjected to a fine of two hundred Rupees, or both. The second Section provided that, if the damage exceeded fifty Rupees, the imprisonment might extend to two years, besides a fine. There was another Section which was not taken from the Penal Code, but from the Code of Criminal Procedure, in which it was proposed that, in the case of the imposition of a fine, the party endamaged should have a portion, not exceeding the loss which he had suffered, awarded to him.

These were the main provisions of the Bill, and with these remarks he begged to move that the Standing Orders be suspended, to enable him to move the first and second reading of the Bill.

MR. HARINGTON seconded the Motion, which was put and carried.

MR. SCONCE then moved that the Bill be read a first time.

The Bill was read a first time.

MR. SCONCE moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

SALT DUTY (BOMBAY).

MR. ERSKINE said, he must also ask the Council to consent to a suspension of the Standing Orders, in order that he might move the first reading of, and then carry at once through its subsequent stages, a Bill "to empower the Governor-General in Council to increase the rate of duty leviable on Salt manufactured in or imported into any part of the Presidency of Bombay." He was naturally unwilling to adopt this course with reference to a Bill which was in the nature of a money Bill, and of the introduction of which therefore a week's notice would ordinarily be required. But he believed that the Council would agree with him that, under the circumstances, this case must be treated as an exceptional one. It could hardly be necessary, he thought, to detain the Council with any

lengthened explanations of the nature and objects of the Bill thus to be proposed. They were indeed exceedingly simple. Had there been here any question as to the general system of Salt Duties in this country, or even as to the general administration of that system in any one Presidency, it would, no doubt, have been desirable to afford full time for deliberation and for the careful discussion of so large a subject. But considerations of the kind could hardly arise in connection with the present measure. For, whatever might be thought on other points, on one point at least there seemed to be little room for difference of opinion, namely, that so long as this impost was maintained, every opportunity should be taken of lessening as far as possible—as far as local exigencies and local experience would admit—the inequality with which it now pressed on different parts of the country. That inequality was undoubtedly considerable; and one of the evidences of this was that, although the Government had recently increased the duties on Salt in those Presidencies where they had previously been highest, it was still impossible in the Bombay Presidency, where they were lowest, to increase them without further recourse to legislation. In the Bengal Presidency he believed the Salt duties had been raised to Rupees 3-4 per maund. In the North-Western Provinces they had been raised to 3 Rupees per maund. In the Presidency of Madras the import duties might be raised by law as high as 3 Rupees per maund; although, under the system actually in force there, the price of Salt sold at the Government manufactories seemed to be so adjusted that, after deducting the estimated cost of production, a sum of about Rupees 1-4 per maund remained, which might be regarded as a duty of Excise and which might still be somewhat increased without any change in the law. In Bombay, on the other hand, neither the Customs nor the Excise duties could be legally raised above 1 Rupee per maund, and hence the necessity for an application to the Legislature. For, in reply to a reference from the Supreme Government, the Government of Bombay had recently intimated their opinion that the Salt duties in that Presidency might at once, if the law were altered, be raised to Rupee 1-4 per maund, without any increase of charge or any probable diminution of the consumption. On this opinion the Government of India had readily acted, and had already issued orders to give effect to the suggested enhancement of rates, by which (he was informed) it was expected that an increase of Revenue would accrue to the extent of 7 or 8 lacs of Rupees per annum. The order for an enhancement of duty, he believed, had been issued and acted upon on Saturday last. It had been the wish of the Government, as he knew, that that order should not have issued without notice being given simultaneously in this Council of a Bill to give effect to the change. And it was to be regretted that that intention had not been carried out. But he trusted that no minor considerations would now interfere with the adoption by the Council of a measure which seemed to be so desirable in other respects, which to some considerable extent would have a favorable effect on the finances, and which had the concurrence of those who were most competent to judge of its policy. In regard to the form of the Bill he need only say that it was drawn on the model of Act I of 1860, which provided for an enhancement of the Salt Duties in the North-Western Provinces. The present Bill contained only three Sections; of which the first repealed some portions of previous Acts, in as far as they limited the Import and Excise duties to 1 Rupee per maund; the second empowered the Governor-General in Council to enhance those duties, from Saturday last, to any rate not exceeding Rupees 1-8 per maund, if necessary; and the third was the usual Clause to indemnify the Officers of Customs who had acted on the Government order for the enhancement in anticipation of the passing of this Bill. He did not know that there was any other point in connection with which any explanation was necessary. And

he would merely therefore in conclusion move that the Standing Orders be suspended in order that this Bill might be read a first time and then carried through its subsequent stages forthwith.

MR. LAING begged to second the Motion and said that he would take this opportunity of stating that he hoped, next Saturday, to submit the Annual Budget for 1861-62, which would be the legitimate time for him to make a General Financial Statement, explaining the changes which had been made in the Salt Duties. He thought that the arguments used by his Honorable friend the Member for Bombay sufficiently explained the necessity for making the proposed increase in the Duty on Salt in the Bombay Presidency to take effect immediately, as a corresponding increase had already been made in the other Presidencies where the existing law admitted of it; and as the measure had been fully assented to by the authorities at Bombay, it was manifestly desirable that not even a week should be lost in placing Bombay in this respect on the same footing with the other parts of the country.

The Motion was then put and agreed to.

MR. ERSKINE then moved that the Bill be read a first time.

The Bill was read a first time.

MR. ERSKINE moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

MR. ERSKINE moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee with the insertion of the following new Section after Section II (on the Motion of Sir Barnes Peacock), and after a necessary verbal amendment in Section III, consequent on the introduction of that Section :—

"The order issued by the Governor-General of India in Council, on the 13th day of April 1861, authorizing an increase of Duty within the limit aforesaid, shall have the same force and effect as if it had been issued after the passing of this Act."

MR. ERSKINE moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. ERSKINE moved that Mr. Laing be requested to take the Bill to the Governor-General for his assent.

Agreed to.

GRANTS OF IMMOVEABLE PROPERTY.

SIR BARTLE FRERE moved the second reading of the Bill "for securing certain grants of immoveable property made by the State."

MR. HARINGTON said, he did not rise for the purpose of opposing the Motion for the second reading of this Bill, of the principle of which he quite approved; though, referring to the second Section, he was inclined to think that, unless some dispensing power was given to the Executive Government, the provision contained in that Section might operate inconveniently and indeed injuriously, not only as regarded the grantee and his heirs, but also as regarded the property constituting the grant. As the Section was now framed, he apprehended the grantee or his heirs would not be able to grant even a lease of the property.

THE VICE-PRESIDENT—I do not see the words "or heirs" used in the Bill. The Bill only speaks of "grantee."

MR. HARINGTON said, he had not overlooked the fact that the word "grantee" only was used in the Bill, but he took it for granted that there had been an omission and that the Bill was intended to apply to heirs also. He should be glad to have any doubt upon this point removed. He also wished to be informed by the Honorable Member of Government who was in charge of the Bill of the ground of the distinction contained in Section III in respect to any process issued out of any Court of Judicature established by Royal Charter before the Bill passed into law.

It seemed to him (Mr. Harington) that, if such a provision was necessary and proper as respected the processes of the Supreme Courts of Judicature, it must be equally necessary and proper as respected the processes of the Sudder Courts and the Courts subordinate thereto. He was aware that the Act, after the model of which they were told this Bill was framed, contained a similar distinction, but the grounds of it did not appear from the Act, and he (Mr. Harington) certainly thought that they ought not to perpetuate the distinction or import it into this Bill unless for good and sufficient reasons.

SIR BARTLE FRERE said, the Honorable gentleman would find, if he referred to the papers presented to the Council on the 29th September last, that at page 5 of them was a letter from the Judge of Allyghur, in which it was mentioned that he had suspended execution of the decree to which the letter referred. It was thence concluded that the Mofussil Courts in the North-West already possessed power to suspend execution of such a decree. As his Honorable friend, however, was an authority in such a matter, he (Sir Bartle Frere) had no doubt he was right and was quite willing to extend the scope of the Bill in Committee.

MR. HARINGTON said, the Section of the Bill to which his question related barred the action of the Bill in respect of processes issued by the Supreme Courts of Judicature prior to the passing of the Bill, which was exactly the reverse of what was done by the Judge of Allyghur in the case referred to in his letter. He believed he was right in saying that the course adopted by the Judge of Allyghur had no authority of law. But as his objection to the Section in question was one of detail, and did not affect the principle of the Bill, it might be further considered in Committee.

MR. SCONCE said, he certainly had no objection to offer to the principle of the Bill so far as it was declared in the annexure. On the contrary, he thought that, if no other case were shown than to protect grants such as that made to a gallant soldier like Kurruck Sing, good cause had been shown for the introduction of the Bill. But, apart from the 2nd Section of the Bill, which had been referred to by the Honorable Member for the North-Western Provinces, it seemed to him (Mr. Sconce) that the 1st Section was open to a great deal of doubt. The Bill was framed after the model of, nay verbally taken from, Act VI of 1849 (for securing Military and Naval Pensions and Superannuation Allowances). But the payment of pensions was of a different nature, and was attended with quite different effects. For example, pensions were generally personal, subject in some cases to renewal on the death of the grantee. Then, as had been remarked by the Honorable and learned Vice-President, the Bill, as it was drawn, referred only to grantees, not their heirs. There was no provision for the lapse of a grant. The words of the Bill seemed to confine its application to life grants, but probably it was also intended to protect hereditary grants, and, indeed, the declared object of the Bill, which was in part to support titles and dignities conferred by the Government, seemed to imply that the Bill should be enlarged so as expressly to embrace the heirs of grantees in cases in which the grants were perpetuated beyond the life of the first grantee.

Then again the 1st Section commenced with the words "Immoveable property which *has been* or may hereafter be granted." How far was this Bill to go back? Was it to apply to all grants heretofore made? Was it to go back to the time of Lord Hastings or Lord Wellesley, or to a still earlier period? Probably grants by Lord Wellesley or Lord Hastings had passed two or three hands. An estate granted originally to one person might be now distributed among many heirs, and certainly it was important to consider whether the protection created by the Bill should be extended to the various portions of the original grant.

The Section seemed also to be impressed in not providing authoritatively for the determination of the grants that were, and those that were

not, to be protected by the Bill. The words used in the Bill as the ground of the grant were "as a reward for loyal and faithful service rendered to the State," &c. But he would ask, how should it be determined as to what was meant by "loyal and faithful services?" The question would inevitably arise, whether a grant fell within those terms; and as the Bill stood, he believed it would be competent to the Courts to decide in any case, whether a grant was, or was not, protected against creditors. This question, it seemed to him, should not be left to the Courts, and he thought that it might be desirable to vest the Government with the power of declaring what grants should be held subject to the provisions of this Bill or not.

Another matter which seemed to him doubtful was, with regard to the 2nd Section, which virtually prohibited grantees from disposing of their grants. The Section ran as follows:—

"All assignments, agreements, orders, sales, and securities of every kind made by any such grantee, on account of any such grant as aforesaid, or for giving or assigning any future interest therein, are hereby declared *null* and *void*."

The words were taken from the Act relating to Pensions. And taking the word "orders," he would observe that, however right and proper the provision might have been with regard to Pensions, the prohibition was hardly applicable to grants of land. What he wished mainly to notice was, whether it was absolutely necessary to prohibit the sale of grants. Take the case of Kurruck Sing. He had received a grant from the Government. His father also had a grant and left the property to his six sons. Now Kurruck Sing also might have six sons, and the effect of this provision, which prevented the sale of the house now granted to Kurruck Sing, would be that the six sons, to enjoy their inheritance, would have to occupy the house in common. But clearly it might be much more convenient to the family to dispose of the property and distribute the proceeds among themselves. He (Mr. Sconce) doubted very much whether the prohibition should be absolute. Take the case of Mr. Boyle of Arrah, who had received a grant on account of most faithful services rendered to the State. Mr. Boyle had reason to be proud of himself, and might be proud to hold an estate in the place where he had so greatly distinguished himself. But suppose that, by and bye, that gentleman might wish to transfer his interest to England. If therefore he wished to dispose of the property, would you prohibit him from selling it? He (Mr. Sconce) might perhaps be permitted to suggest that, instead of leaving these grants to follow the ordinary law of succession, it ought to be competent to Government to declare that they should be governed by the law of primogeniture. Otherwise he had strong doubts of protecting in perpetuity the grants that would fall within the principle of this Bill.

Mr. FORBES said, a dispensing power on the part of Government, to enable Courts to adjudicate claims to grants, was possessed in the Southern Presidency by Regulation IV. 1831 of the Madras Code, Clause 1 Section II of which provided as follows:—

"The Courts of Adawlut are hereby prohibited from taking cognizance of any claim to hereditary or personal grants of money or of land revenue, however denominated, conferred by the authority of the Governor in Council in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zemindaries or pollams forfeited or held under attachment or management by the Officers of Government, or as a yeomiah or charitable allowance, or as a pension, and also of any claim for the recovery or continuation of, or participation in, such grants, whether preferred against private individuals or public Officers, unless the plaint is accompanied by an order signed by the Chief or other Secretary to Government, referring the complaining party to seek redress in the established Courts of Adawlut."

It seemed to him that that was a dispensing power of the nature adverted to by the Honorable Member for the North-Western Provinces, and it was in his opinion a very desirable power to be vested in the Government.

SIR BARTLE FRERE said, many of the objections which had been stated by the Honorable Members for Bengal and the North-Western Provinces had been previously brought to his notice by the Honorable Member for Bombay, and he (Sir Bartle Frere) had prepared some amendments according to the very sound views expressed by him, which it was his (Sir Bartle Frere's) intention to move in Committee. The first was the addition of a proviso requiring the Government to declare by Notification in the Government Gazette the particular grants to which the Act was intended to apply. Next it was intended to get over the difficulty suggested by the Honorable Member for Bengal, by authorizing the Government of India, when it should be desirable to withdraw an estate from the operation of the Act, to rescind the Notification in the same form in which it was originally made. These, however, were matters of detail, which, as suggested by the Honorable Member for the North-Western Provinces, would be better considered in Committee. If the principle of the Bill were now affirmed by the Council, the necessary amendments could be made in Committee. As truly stated by his Honorable friend opposite (Mr. Sconce), there were few things which the natives had more at heart than to secure by law those privileges which attached to landed property by custom under their own rulers, and among them none was more valued than a provision similar to our own law of entail. He then referred to the gratification with which the Taloukdars of Oude had received the extension to their estates of the rule of primogeniture and of a species of entail. The wise policy thus followed at the suggestion of the Chief Commissioner, had done more perhaps than any single act to show the people of Oude the desire of the British Government to uphold those rights of landed property to which they were most attached. He (Sir Bartle Frere) should be prepared to consider in Committee the suggestions which had been offered, if the principle of the Bill were now assented to.

THE VICE-PRESIDENT said, this Bill appeared to him to involve some very important principles. He had not had time to consider it as carefully as he could have wished, the Bill having been read a first time on Saturday last, and been printed and circulated only a few days ago. One great objection which had been pointed out by the Honorable Member for Bengal was this:—Suppose an estate came to several heirs, was this Bill intended to protect the estate from execution issued against the share of one of the heirs for the purpose of realizing his debt? The terms of the Bill were not restricted to grants by which any particular class of heirs was to inherit. In the case of a sovereignty, according to the Hindoo or Mahomedan law, the estate might descend, as in England, to the eldest son. This Bill related to the grants of land made either for eminent loyal services rendered to the State or to accompany titles Suppose the case of a grant made for loyal service, in which no particular course of descent was specified. If the grantee were a Hindoo, upon his death the estate would descend to and be shared equally by all his sons; or in the case of a Mahomedan, not only would the sons be entitled to share equally, but the daughters could each claim a share equal to half of a son's share, so that the estate might descend not only to sons but also to daughters, females as well as males; and although, according to Hindoo law, the sons would take as a joint family, they would be entitled to have a partition. In the case of the death of a grantee, therefore, whether a Hindoo or a Mahomedan, the estate granted might be divided into numerous shares, and on the death of each of the heirs, another sub-division might take place, and the estate, which might originally be a large one, might be thus divided into very minute portions, each of them being protected from seizure on account of the debts of its owner and inalienable for ever. Even if a case had been made out for this Bill with regard to entailed estates, or estates granted upon condition that they should

descend according to the rules of primogeniture, it appeared to him to be very impolitic to declare, that after an estate has been divided by descent into minute portions and vested in numerous heirs, females as well as males, those portions should never be alienated by or seized for the debts of the owner, but must necessarily go on in the descending line for ever, however small the shares by reason of the subdivisions by descent might become. Such a privilege was much larger than had even been conferred on a Marlborough, a Nelson, or a Wellington. According to the Act of Parliament by which an estate was to be purchased for the Marquis of Wellington before he obtained a Dukedom, it was provided that the estate

"should always go along and be enjoyed with the said title, honor, and dignity of Marquis of Wellington so long as the same should endure, and that the said premises should also be inalienable until there should be a failure of issue of the body of the said Marquis of Wellington."

According to the English law in ordinary cases, when an estate was entailed, the issue in tail might be barred by the tenant in trust in possession, or by joining with the tenant for life. This, however, in the case of the Marquis of Wellington, was taken away as to the estates purchased by Government so long as he had heirs of his body. Similar provisions were made by the Act under which Strathsfieldsaye was purchased after he had obtained a Dukedom, and a further grant had been made by Parliament. Similar provisions were also made in the case of Lord Nelson. So long, therefore, as an issue of his body existed, neither the Duke of Wellington nor the heir of his body could bar the entail or sell the estate. The Act, however, went on to provide that, on failure of heirs of his body, the property should vest in fee simple, and that the remainder in fee might be sold or disposed of by deed or will by the Duke or his heirs at any time. Under that Act, therefore, the estate was rendered inalienable only so long as heirs of the body existed, but it was alienable as soon as it became vested in fee simple. This Bill, however, would render the estates to which it related inalienable for ever even though it might be sub-divided by descent amongst the general heirs. Such a law appeared to him to be very impolitic. It extended to all grants whether the estates were entailed or not; and even to estates which might descend to numerous heirs, male or female, or both, according to the Hindoo or Mahomedan Law of Inheritance. It was not even limited to estates which might have been granted to descend according to the law of primogeniture. If grants had been made to a Hindoo or Mahomedan without declaring that it should descend to particular heirs, this Council could not properly pass an Act to alter the terms of the grant.

Another important question which was involved in the case was this. By this Bill, the Council were called upon to recognise the power of the Governor-General in Council, and even of the local Governments, to grant away portions of the territories of the Crown as a reward for loyal services, or in support of titles of dignities. He (the Vice-President) had not had much time to devote to the consideration of that point. But he doubted whether even the Governor-General in Council could grant away portions of the territories in that way, and he certainly was not prepared to admit the principle. He apprehended that, at the time of the passing of the Act of 1858, the East India Company had no power to grant away the territories or revenues of the Crown without the sanction of the Board of Control, and that the Board of Control had no power to order them to do so. When the East India Company held the territories under grants from the Crown, they might have possibly had that power to the extent of the interest which was granted to them. By the 7 George III, c. 57, all the territorial acquisitions and revenues then lately obtained in the East Indies were vested in the East India Company for two years, from the 1st February 1767, on payment of an annual sum of

The Vice-President

£400,000. By the 9 George III., c. 24, the Company were confirmed in the possession of the territory and revenues previously granted, for a further period of five years from the 1st February 1769, on payment of a like annual sum. By these Acts the territories were vested in the East India Company for the terms mentioned therein. Those Acts were continued from time to time, by various Acts passed subsequently. But when the Company ceased to be a trading Company, and became a Government only, it was provided by the Charter Act 3 and 4 William 4, c. 85, s. 1, that the territorial acquisitions and revenues mentioned or referred to in the said Act of the 53rd year of his late Majesty King George the III and all other territories then in the possession and under the Government of the East India Company, except the Island of St. Helena, should remain and continue under such Government until the 30th day of April 1854; and then it went on to provide that all the lands and hereditaments, revenues, rents, and profits of the said Company should remain, and be vested in, and be held, received, and exercised respectively, according to the nature and quality, estate and interest of and in the same respectively, by the said Company, in trust for His Majesty, his heirs, and successors for the service of the Government of India. Thus the territories were vested in the East India Company in trust for the Crown and for the service of the Government of India. By Sections 9 and 10, all the territorial and other debts and liabilities of the Company were charged on the territories. Section 9 provided as follows:—

"From and after the said 22nd day of April 1834, all the bond debt of the said Company in Great Britain, and all the territorial debt of the said Company in India, and all other debts which shall on that day be owing by the said Company, and all sums of money, costs, charges, and expenses which after the said 22nd day of April 1834, may become payable by the said Company in respect or by reason of any covenants, contracts, or liabilities then existing, and all debts, expenses, and liabilities whatever, which after the same day shall be lawfully contracted and incurred on account of the Government of the said territories, and all payments by this Act directed to be made, shall be charged and chargeable upon the revenues of the said territories; and neither any stock or effects which the said Company may hereafter have to their own use, nor the dividend by this Act secured to them, nor the Directors or proprietors of the said Company shall be liable to or chargeable with any of the said debts, payments, or liabilities."

By Section 25 the Board of Control were vested with full power and authority to superintend and control all grants of salaries, gratuities, and allowances, and all other payments and charges out of or upon the said revenues or property respectively. But Section 110 provided that nothing in the said Act contained should be construed to enable the Board of Control to give or cause to be given directions ordering or authorizing the payment of any extraordinary allowance or gratuity, unless in the cases in which such directions might then be given by them.

The 33 George III, c. 52, s. 18, provided as follows:—

"It shall not be lawful for the said Board to give, or cause to be given, any direction for the payment of any extraordinary allowance or gratuity from the said revenues to any person, on account of services performed in India, or on any other account whatever to any greater amount, or to any other person than shall be specified and contained in some despatch proposed by the said Court of Directors to be sent to India, and transmitted by them to the said Board for their approbation, and in every case where any such directions shall be so given, a distinct account of all such allowances or gratuities shall be added to the next list of establishments laid before Parliament by the said Court of Directors."

By the above Section and the 53 Geo. III, c. 155, s. 88, and the 55 Geo. III, c. 64, the Court of Directors, with the sanction of the Court of Proprietors, could not charge their funds with any gratuity exceeding £600 without the consent of the Board of Control. He could not find any law by which, prior to 1858, the Governor-General in Council or the local Governments could grant, or convey away, as a reward for services, lands vested in the East India Company in trust for the Crown, to an unlimited extent, without the previous authority of the

Court of Directors sanctioned by the Board of Control.

Then we came to the 21 and 22 Vic. c. 106, the law by which the territories were transferred from the East India Company to the Crown itself. Section 1 provided as follows :—

"The Government of the territories now in the possession or under the Government of the East India Company, and all powers in relation to Government vested in or exercised by the said Company in trust for her Majesty, shall cease to be vested in or exercised by the said Company, and all territories in the possession or under the Government of the said Company, and all rights vested in, or which if this Act had not been passed, might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name ; and for the purposes of this Act, India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such right as aforesaid."

The territories were now absolutely vested in the Crown. Then it was provided by Section 2—

"India shall be governed by and in the name of Her Majesty, and all rights in relation to any territories which might have been exercised by the said Company, if this Act had not been passed, shall and may be exercised by and in the name of Her Majesty as rights incidental to the Government of India ; and all the territorial and other revenues of or arising in India, and all tributes and other payments in respect of any territories which would have been receivable by or in the name of the said Company if this Act had not been passed, shall be received for and in the name of Her Majesty, and shall be applied and disposed of for the purposes of the Government of India alone, subject to the provisions of this Act."

Then came two Clauses relating to the transfer of property. Section 39 provided :—

"All lands and hereditaments, monies, stores, goods, chattels, and other real and personal estate of the said Company subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants, and engagements, and all rights to fines, penalties and forfeitures, and all other emoluments which the said Company shall be seised or possessed of, or entitled to at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty to be applied and disposed of subject to the provisions of this Act, for the purposes of the Government of India."

Section 40 went on to provide :—

"The Secretary of State in Council, with the concurrence of a majority of votes at a Meeting, shall have full power to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty under this Act as may be thought fit, or to raise money on any such real estate by way of mortgage, and make the proper assurance for that purpose, and to purchase and acquire any land or hereditaments or any interests therein, stores, goods, chattels, and other property, and to enter into any contracts whatsoever, as may be thought fit for the purposes of this Act ; and all property so acquired, shall vest in Her Majesty for the service of the Government of India, and any conveyance or assurance of or concerning any real estate to be made by the authority of the Secretary of State in Council, may be made under the hands and seals of three Members of the Council."

Whether the words "sell and dispose of" authorized the Secretary of State in Council to dispose of lands by way of gratuity, it was unnecessary to consider ; for even if they did, the power could not be exercised without the concurrence of a majority of the Council present at a Meeting.

Then came Section 41 by which it was provided :—

"The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a Meeting of the Council."

He thought it was a matter of very serious importance, whether we ought to pass an Act recognizing and admitting the right of the Governor-General in Council and of the local Governments, to grant lands by way of gratuity, either as a reward for loyal services, or in support of titles or dignities. He was not prepared at present to give a decisive opinion on the subject. He rather thought that this Council had no such power. On these grounds he was not prepared to assent to the Bill as it stood at present.

The Vice-President

There was one other question which had been adverted to by the Honorable Member from the North-Western Provinces. If executions issued from the Supreme Courts before the passing of the Act were to be exempted, he saw no reason why executions issued by Courts of equal jurisdiction in the Mofussil should not also be exempted.

SIR BARTLE FRERE said, having already spoken once on this occasion, he believed he was precluded by the Standing Orders from speaking a second time on the same question without the permission of the Council.

THE VICE-PRESIDENT said, he thought the Honorable Member was entitled to make a reply. He (the Vice-President) should be glad to hear what the Honorable Member had to say in answer to what had fallen from himself.

SIR BARTLE FRERE said, he had spoken before under the impression that all the objections to the principle of the Bill had been stated, and that he was consequently the last speaker in the debate. With the leave of the Council he would now reply to the observations which had just fallen from the Honorable and learned Vice-President. He (Sir Bartle Frere) must, with all due deference, take exception in the first place, both as regarded law and fact, to the Honorable and learned gentleman's remarks with regard to Hindoo inheritance of landed estates. He could not speak with certainty with regard to this part of the country, but he could speak with regard to the largest portion of India that there were two modes of inheritance of grants of landed property, which were universally known and recognized by every Court. There was first of all the ordinary Hindoo or Mahomedan law of inheritance which had been correctly stated by the Honorable and learned Vice-President; and there was that of what was called by Hindoo lawyers the Sawusthan, which involved a right of primogeniture and of strict entail. This latter law was not confined to kingdoms or chiefships, but extended sometimes to very minute portions of land. It depended on the terms of the original grant which placed it as regards inheritance on a different footing from ordinary landed property. The terms had nothing to do with the extent of the grant; whether that extent were large or small, the law of primogeniture might, and frequently did, form a condition.

With regard to the parallel which had been drawn by the Honorable and learned Vice-President between the case of the grants to which the Bill referred and those of Blenheim and Strathsfieldsaye, he would submit whether there was not in the argument of the Honorable and learned Vice-President a confusion between the law with regard to such grants and the grant itself. The Acts of Parliament quoted by the Honorable and learned gentleman were in fact the grants, and answered to what would be called in this country the sunnuds, and had no relation to the general law relating to succession of landed property. A sunnud might be drawn up in the very words of the Blenheim or Strathsfieldsaye Acts quoted by the Honorable and learned gentleman, and yet it would be necessary to have a law defining the legal position of these grants in relation to the ordinary laws and Courts of this country.

He would merely remark, with regard to one observation which fell from the Honorable and learned Vice-President, that in these matters we were not simply to consider the interests of the parties to whom the grants were made. The grantees and their deeds had become national property, and it was not for the sake of endowing future Wellesleys and future Nelsons, but of recording the memory of great services rendered to the State, that these grants were made. The same argument applied in a greater or smaller degree to every grant made for public services, and we should not lose sight of the fact that the object was not to endow this or that family, but to keep alive, in a manner peculiarly intelligible to the native community, the memory of good service rendered to the Government. With regard to

all these grants, it was quite competent to the Government to restrict them to heirs male according to the law of primogeniture, and this Bill would have nothing to do with such restrictions.

It was not his purpose to enter in detail on the very large question which had been mooted by the Honorable and learned Vice-President, without any notice or any very obvious connection with the matter in hand, as to the right of the Governor General in Council to make any grants of land. He confessed he was not prepared for any such mines being exploded under his feet, and he must protest against the line of action taken by the Honorable and learned gentleman.

THE VICE-PRESIDENT said, the second reading of the Bill was moved only this morning, and he had no other opportunity of stating his objections before.

SIR BARTLE FRERE said, the Honorable and learned gentleman had stated that he had doubts as to the power of the Governor General in Council to grant away any portions of the territory of India. At the same time he confessed that he had not time to examine the question, and could not speak decisively even as to his own opinion. If the Honorable and learned gentleman thought it necessary to raise this very large question, and if he entertained doubts on a point of such very grave importance, he (Sir Bartle Frere) could only regret that the Honorable Vice-President had not asked him to defer the second reading of the Bill to-day, till those doubts were settled. He need not inform the Council that this was no light matter. It involved estates of great value in all parts of the country, and he must question the right of any one, especially of one whose opinion carried such a great and deserved weight of legal authority, to throw out doubts affecting the rights of property so large in amount, without the gravest and most careful consideration. The question so unexpectedly raised to-day was as to the right and power of Government to alienate any portion of land. Whether the view which the Honorable and learned Vice-President seemed inclined to take was or was not correct, the Council was aware that that power had in all time past been extensively used not only by the present Governor-General but by all his predecessors, and the dictum they had just heard must throw a doubt on the validity of all such titles.

With regard to the assertion that the East India Company possessed no such power, he would not enter on all the arguments used by the Honorable and learned Vice-President; but as regarded the fact that the East India Company did make such grants under each successive Charter, he could himself call to mind cases in which they had exercised such power both while they had Charters as a trading Company and under each subsequent Charter; and he could hardly doubt that in so doing they acted with the concurrence of competent legal advisers, as they did of course with the consent of the Crown Minister, the President of the Board of Control.

THE VICE-PRESIDENT said, he had spoken of grants made since the passing of the Act of 1858.

SIR BARTLE FRERE said, he would not follow the Honorable and learned Vice-President through his argument as to the effect of the Act of 1858. Whether powers which were certainly exercised without question under the Charter of 1854, and previous Charters which constituted a "*trust*," were restricted or annulled when the trust became a prerogative of the Crown—what was the exact extent of the "rights incidental to the Government of India" which the Viceroy now exercised on behalf of the Crown—were questions he would not discuss. He could only express his sense of the extreme importance of the question, and his great regret that it should have been raised in an incidental and indirect manner as it had been to-day.

THE VICE-PRESIDENT said, he wished to ask the Honorable Member in charge of this Bill, whether the grants which were referred to in Section I, as having been made by Government, had

been made descendible according to the law of primogeniture.

Sir BARTLE FRERE said, he conceived it was perfectly competent to the Government to make grants descendible in that or any other manner. He was aware of such grants having been made to descend according to the law of primogeniture; but whether all the grants were so limited, it was impossible for him to say without examining them.

The VICE-PRESIDENT begged to explain, with reference to the observations of the Honorable Member, that he did not look into the question until this morning. It was not his intention to oppose the second reading of the Bill. He merely wished to state that in voting for the second reading, he did not consider himself bound to the principle involved in it.

The Motion was then put and carried, and the Bill read a second time.

PORT-DUES (AMHERST.)

Mr. SCONCE moved that the Bill "for the levy of Port-dues in the Port of Amherst" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

REPEAL OF REGULATIONS AND ACTS.

The Order of the Day being read for the third reading of the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter"—

Mr. HARINGTON said, before making the Motion that this Bill be now read a third time, he must ask the Council to allow the Bill to be recommitted to a Committee of the whole Council, to enable him to move the omission from the Schedule of a Section of one of the Regulations included therein. The Section to which he alluded was Section XIV Regulation IV of 1793. The Section related to the offence of perjury when committed in a Civil Court. At the time the Section was introduced into the Schedule appended to the Bill, it was supposed that the Indian Penal Code and the Code of Criminal Procedure would come into operation on the 1st May next, and as the former of those Codes defined the offence of and prescribed a punishment for perjury, and the Procedure Code contained rules for enquiring into and trying the offence when committed in a Civil Court, there would be no necessity for retaining any of the existing laws relating to the offence of perjury when committed in the Civil Courts after the new Code came into operation. But as the Council had determined that the introduction of the Penal Code and with it the Code of Criminal Procedure should be postponed until the 1st January next, they could not intermediately dispense with any of the Criminal laws or laws relating to Criminal offences now in force, and it was necessary therefore to exclude from the repealing Schedule of the Bill the Section to which he had been referring.

Agreed to.

After some conversation, the further consideration of the Bill was postponed till Saturday next.

MINORS.

Mr. SCONCE moved that the Bill "to amend the law relating to Minors" be read a third time and passed.

The Motion was carried and the Bill read a third time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 18 was passed as it stood.

Section 19 was passed after a verbal amendment.

Section 20 provided that only Covenanted Servants and European British subjects should hold a preliminary enquiry into a case triable by a Supreme

Court, or commit or hold to bail any European British subject to take his trial before such Court.

MR. SCONCE said, he had intended to move the omission of this Section. But the Council were probably aware that, two years ago, a Section similar to the present excited a considerable discussion, in which the Honorable and learned Judge (Sir Charles Jackson) who was this day absent took a great part; and if the Council had no objection, he would propose that the consideration of this Section be postponed.

THE CHAIRMAN said, he had in his hand a note from the Honorable and learned Judge (Sir Charles Jackson) to the address of the learned Clerk of the Council, stating that he was prevented by indisposition from attending the Council to-day.

The consideration of Sections 20 to 24 was then postponed.

Sections 25 to 45 were passed as they stood.

MR. HARINGTON moved the introduction of the following new Section after Section 45, observing that there was in the Bill a similar provision relating to Warrants:—

"A summons shall ordinarily be issued through a Police Officer; but the Magistrate issuing the summons may, if immediate service be necessary and no Police Officer be immediately available, direct the summons to be served by any other person."

Agreed to.

MR. SCONCE suggested the expediency of providing for the pre-payment of the cost of issuing summonses and warrants with respect to offences not heinous. In the first instance a provision to effect that purpose had been introduced into the Police Bill but was subsequently omitted, he believed, for re-consideration when the Precedure Bill should come before the Council. He had been in communication on the subject with the Magistrate of the 24-Pergunnahs, from whom he had ascertained that the total charge on that account in that District in 1860, had been about Rupees 1,700. If that was the amount in one District, the amount must be very much more in the other Districts. He had no wish to make a Motion on the subject at present, but he mentioned the matter that it might not be lost sight of, and it would be perhaps for the Government to consider whether the charge in question should fall upon the public Treasury.

The Section was passed as it stood.

Sections 46 and 47 related to the mode of serving a summons on an accused person.

MR. FORBES moved the incorporation of these two Sections into one, after the omission of words requiring the summons, in case the accused could not be found, to be left with some adult male member of his family residing with him. It appeared to him sufficient to require, as was provided in the latter Section, that the summons should be affixed to some conspicuous part of the house in which the accused ordinarily resided, and that it was not expedient that one member of a family should be served with a Criminal process, because another member of the family was charged with some offence. A summons was after all only a notice, and it appeared to him that the simplest and quickest way of making a notice known to the party to whom it was issued was to affix it on his house in case his absence might prevent a personal service.

After some discussion, the Council divided :—

Aye 1.	*Noes* 6.
Mr. Forbes.	Mr. Erskine.
	Mr. Sconce.
	Mr. Harington.
	Mr. Laing.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived and the Sections were then passed as they stood.

Sections 47, 48, and 49 were passed as they stood.

MR. HARINGTON moved the introduction of the following new Section after Section 49 :—

"The provisions relating to a summons and its issue contained in this Chapter shall be applicable to every summons issued under this Act."

Agreed to.

Sections 50 to 57 were passed as they stood.

Sections 58 and 59 were incorporated after amendments.

The CHAIRMAN moved the introduction of the following new Section after the above :—

"If the place of arrest under the preceding Section be within 20 miles from the place at which the warrant was issued, the person accused may be carried in the first instance before the Magistrate who issued the warrant."

Agreed to.

Sections 60, 61, and 62 were passed as they stood.

Section 63 was passed after a verbal amendment.

Sections 64 to 68 were passed as they stood.

Section 69 was passed after amendments.

Section 70 was passed as it stood.

Section 71 was passed after a verbal amendment.

Section 72 was passed as it stood.

Mr. HARINGTON moved the introduction of the following new Section after Section 72 :—

"The provisions relating to a warrant and its issue contained in this Chapter shall be applicable to every warrant issued under this Act."

Agreed to.

Section 73 was passed after amendments.

Section 74 empowered Officers in charge of a Police Station to arrest vagabonds and others without orders from a Magistrate and without warrant.

Mr. FORBES thought that the Section should be extended by giving all Police Officers power to arrest vagabonds. The Officer in charge of a station would hardly ever leave his station and would scarcely ever be able to arrest vagabonds, and the ordinary Police Officers would have better opportunities of observing and arresting them. He should therefore move an amendment to that effect.

Mr. SCONCE said, it was a mere matter of repute and suspicion as to who was a vagabond, and he would not therefore give such a power to every common Police Officer.

Mr. HARINGTON said, it would not be necessary for the Police Officer in charge of a Station in every case himself to go and arrest a vagabond; he might depute a subordinate Police Officer to make the arrest. He did not think it would be safe to give the power of arrest in the cases which would fall under this Section to every Police Officer.

Mr. ERSKINE said that the effect of the amendment would be that any Policeman might arrest any person on the ground that he was of bad livelihood, although the person was not charged with the commission of any offence. He should object to give that power indiscriminately to any Police in the world.

Mr. FORBES observed that all parties, the greatest criminals, even murderers, were in the first instance apprehended only on suspicion, and every man was considered innocent until he was proved guilty. For his part, his sympathies were all with the honest portion of the community, and he did not share the excessive tenderness felt by some for those who were reputed robbers, house-breakers, thieves, receivers of stolen property, and of notoriously bad livelihood, and it was with these classes that the Section now under consideration was to deal. Furthermore in this Bill it was proposed to give power to imprison any one of the characters he had just referred to for three years, and it did seem to him to be very inconsistent to allow of three years' incarceration in one part of the Bill for an offence for which the ordinary Police might not arrest under another part of the Bill.

The question being put, the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Forbes.	Mr. Erskine.
Sir Robert Napier.	Mr. Sconce.
Sir Bartle Frere.	Mr. Harington.
	The Chairman.

So the Motion was negatived, and the Section then passed after a verbal amendment.

Sections 75 to 88 were passed as they stood.

Section 89 was passed after an amendment.

Section 90 related to the mode of executing a search warrant out of the jurisdiction of the Magistrate issuing the warrant.

MR. FORBES said, this Section provided that, when a Magistrate wished to issue a warrant for execution out of his jurisdiction, the warrant must be endorsed by the Magistrate of the District in whose jurisdiction it was to be executed, before it could be executed. In most cases stolen property would be converted into such a shape that it could not be recognized before this process could be gone through. We allowed the thief whose personal appearance could not be altered, to be followed from one jurisdiction to another, and refused to allow the property he stole, the appearance of which could be altered, to be followed in the same manner. It was true that another Section allowed of a search warrant being executed in another jurisdiction in emergent cases; but in his opinion all search warrants were emergent, and he should propose so to amend this and the following Section as to allow of search warrants being executed beyond the jurisdiction of the Magistrate who might issue them.

After some discussion, the further consideration of this and the following Section was postponed.

Section 92 was passed after a verbal amendment.

Section 93 was passed as it stood.

Sections 94 and 95 were passed after amendments.

Section 96 was passed as it stood.

The consideration of Section 97 was postponed.

Sections 98 to 102 were passed as they stood.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

ROHILCUND DIVISION.

MR. HARINGTON postponed the Order of the Day for the adjourned Committee of the whole Council on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

STAGE CARRIAGES.

MR. HARINGTON also postponed the Order of the Day for a Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

PORT-DUES (AMHERST).

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "for the levy of Port-Dues in the Port of Amherst" to the Governor-General for his assent.

Agreed to.

MINORS.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to amend the law relating to minors" to the Governor-General for his assent.

Agreed to.

GRANTS OF IMMOVEABLE PROPERTY.

SIR BARTLE FRERE moved that the Bill "for securing certain grants of immoveable property made by the State" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover, with an instruction to submit a preliminary Report under Standing Order No. 70.

Agreed to.

WRECKED BOATS.

MR. FORBES moved that a communication received by him from the Madras Government, be laid upon the table, and referred to the Select Committee on the Bill "for the preservation of property recovered from Wrecked Boats."

Agreed to.

The Council adjoured.

Saturday, April 27, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble Major-General Sir R. Napier,
Hon'ble S. Laing,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq., and
Hon'ble Sir C. R. M. Jackson.

SALT DUTY (BOMBAY); PORT-DUES (AMHERST); AND MINORS.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to empower the Governor-General in Council to increase the rate of Duty leviable on Salt manufactured in, or imported into, any part of the Presidency of Bombay," the Bill "for the levy of Port-dues in the Port of Amherst," and the Bill "to amend the law relating to Minors."

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits).

SIR BARTLE FRERE moved that the Petition be printed.

THE VICE-PRESIDENT said, the Honorable Member who had just sat down, had been good enough to send him a copy of this Petition. The Petitioners represented that they were not aware until a recent period that the law of limitation would affect their rights. The law certainly very materially affected their rights, for it reduced the period of limitation for the institution of suits concerning trade-debts from six to three years. As the Act would begin to take effect from the 5th of May next, if, as was represented by the Petitioners, they were ignorant until a recent period that the law would affect them, it appeared to him that a Bill should immediately be brought in to suspend the operation of the Act till such time as the Petitioners could take steps for the recovery of their claims. Otherwise not only the Petitioners, but others, might fairly complain, if they were ignorant of the effect which the law would have upon their interests, that they had in a manner been taken by surprise. Under these circumstances, he proposed afterwards to move for a suspension of the Standing Orders, to enable him to bring in, and pass through all its stages, a Bill to suspend the operation of the Act till the 1st January 1862. He would not detain the Council now with any further observations on the subject, but would fully explain the circumstances of the case when he should move for leave to bring in the Bill.

The Motion to print the Petition was then put and carried.

PETITION OF MR. SCHOKMAN.

THE CLERK reported to the Council that he had, under the 27th Standing Order, certified on the back of a Petition of Mr. John William Schokman, that in his judgment it was not framed in accordance with the 22nd Standing Order, forasmuch as it did not relate to any matter connected with the business of the Council.

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition of Ryots of Kedarnuggur, in the District of Nuddea, against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

THE CLERK also presented five other Petitions from ryots of Jessore similar to the above.

SIR BARTLE FRERE moved that the Petitions be printed and referred to the Select Committee on the Bill.

Agreed to.

CATTLE TRESPASS.

THE CLERK presented to the Council a Petition from the Indigo Planters' Association, praying for fur-

ther amendments in Act III of 1857 (relating to trespasses by Cattle).

MR. SCONCE said, before moving that this Petition be printed, he desired to state that it was his purpose to move at a future stage of to-day's proceedings, that the Bill should be referred to a Select Committee with a view to their taking the whole law into consideration, and in order that the local Governments might be consulted as to the necessity of amending, on any other points than the Bill now provided for, Act III of 1857. At present, the Bill merely embodied the offences already enacted in the Penal Code, but it might also be desirable to amend the law on other points, and the postponement of the consideration of the Bill would afford opportunity for that purpose. He begged to move now that the Petition be printed.

Agreed to.

TREASURE TROVE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a Despatch from the Secretary of State on the subject of Treasure Trove in India.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

FINANCES OF INDIA.

The Order of the Day being read for Mr. Laing to make a Financial Statement for 1861-62—

MR. LAING rose and spoke as follows :—

I rise, Sir, for the purpose of submitting to the Legislative Council, on behalf of the Government, the Budget of India for the year 1861-62. The occasion is too grave for me to indulge in preface. India has been eagerly watching for this Statement, to learn whether she is solvent or bankrupt, and England turns an anxious eye to the East to know whether her Indian Empire is to be a future source of strength or of weakness.

In presence of such great interests, one sort of eloquence alone is admissible—that of facts—and to them I address myself.

In the first place, how do we actually stand? When my predecessor, the late lamented Mr. Wilson, brought forward his Budget for 1860-61, little more than twelve months ago, he showed that India had long suffered under a chronic Deficit, which, since the Mutiny, had increased to a frightful amount. For thirty-three years out of the preceding forty-six, the average Deficit had amounted to £2,500,000 a-year, and the three years alone, from 1857 to 1860, had added £38,000,000 to the National Debt. The prospective Deficit for the year 1860-61 was estimated by Mr. Wilson at £6,500,000.

He proposed to meet it partly by new taxes, partly by reductions, and partly by drawing on the Cash Balances, which were then unusually large, owing to the success of recent Loans.

Unfortunately, of these anticipations, the last only was fully realized. The actual Deficit of 1860-61 has been £6,678,000, and it has been met by a corresponding reduction of the Cash Balances in India and England, which, on the 30th April 1860, stood together at £19,600,000, and on the 30th April 1861, will have been reduced to about £14,500,000.

Let me explain this more fully.

Mr. Wilson proposed,—in addition to those augmentations of Salt, the Customs, and Stamp Duties, which had been already enforced, and of which the year 1860-61 had the benefit,—two new Taxes, the Income Tax and the License Tax. Of these the first was passed into law, but at so late a period, that the year 1860-61 was only partially benefited by it.

The figures of the Regular Estimate, published in February last, which give the latest authentic Returns, and close the year 1860-61 with a final Deficit of £6,678,000, include £803,550 of Mr. Wilson's Income Tax. No accurate Estimate was attempted of the produce of the new Taxes at the time, but it was roughly stated that the Income Tax might produce about £2,500,000 a-year and the License Tax about £1,000,000.

I fear these Estimates are greatly over-stated.

From the Returns of the Income Tax, which are now nearly completed, I can hardly venture to take its total annual net produce at more than £1,400,000. The License Tax is still a matter of conjecture, but looking at the fact, that with an average payment of 1½ Rupees per head, which is as much as we should get with three classes at 1, 2 and 3 Rupees, it would require 7,000,000 of tax-payers, representing 35,000,000 of population, to give us £1,000,000. I do not think we should get any thing like it. The Estimate of the Authorities of Bengal would not make the License Tax yield above £400,000 for all India. This may be too low, but I believe that £2,000,000 for a full year's net produce of the Income and License Taxes together is quite the outside of what we could safely reckon upon. Assuming, then, the License Bill to have passed, and Mr. Wilson's Financial measures to have been in full operation for the year, how should we stand ?

The Deficit of 1860-61 is £6,678,000, but nearly £700,000 of this is occasioned by payments for compensations on account of the Mutiny, which will not recur ; so that the real Deficit is in round numbers £6,000,000. Mr. Wilson's new Taxes would have given us £2,000,000 in 1861-62, as against £800,000 in 1860-61, or an improvement of about £1,200,000 in Revenue, but from this must be deducted about £700,000 for certain wind-falls, in the shape of Sale of old Stores, repayments by Native Princes, and so forth, received in 1860-61, and which will not be received again in 1861-62.

The position, therefore, left us by the Budget of 1860-61 is simply this. Deficit £6,000,000, less £500,000 improved Revenue; remaining Deficit £5,500,000.

Perhaps some Members of Council may have seen a much more favorable Statement, which was recently made by the Secretary of State to the British House of Commons.

It was stated that, whereas Mr. Wilson had estimated the reductions of Expenditure in 1860-61 at £1,700,000, and subsequently at £2,500,000, they had turned out in reality to be £3,300,000 ; so that after saving £3,500,000 in 1859, we had again saved £3,300,000 in 1860, which, with £3,500,000 of new Taxes, extinguished our Deficit and made us independent of Loans, except to complete our Railways.

This statement was made in perfect good faith by the Secretary of State, on information which he had a right to rely upon, but unfortunately that information mistook wishes for facts and anticipations for realities. There was *not* a reduction of £3,300,000 as supposed by Sir C. Wood, or even of £1,700,000 as estimated by Mr. Wilson, but a positive increase of £213,000 in the total Expenditure of 1860-61 over that of 1859-60.

The figures which I read from the Regular Estimate, corrected up to last February, show that the total expenditure was £46,417,000 in 1859-60, and £46,630,000 in 1860-61.

Even if we allow £700,000 for the Mutiny Compensation, the actual reduction of 1860-61, compared with 1859-60, will be less than £500,000.

The difference arose thus.

The reduction of Expenditure in India was over-estimated by £1,500,000, owing to a too sanguine expectation that the recommendations of the Military Finance Commission would be carried out in 1860-61.

The increase of Home Expenditure for Debt, Railways, and Army was overlooked. The produce of the new Taxes was taken, £1,500,000, too high, and it was forgotten that £800,000 of the amount had been already received in 1860-61, and was included in the Statement, showing the Deficit, of £6,000,000.

No allowance was made for the temporary nature of some of the Receipts of 1860-61, such as the Punjaub Trade Tax and Sale of Stores. These errors together amount to upwards of £5,000,000, and just make the difference between the equilibrium announced in England, and the Deficit of £5,500,000, which is the real result of last year's Budget, after crediting it

with a full year's proceeds of all the new Taxes, including the License Tax, which is not yet sanctioned.

I will not attempt to conceal from you that this was an unsatisfactory result. To find that, after the great effort made last year, the Income Tax had produced less than £1,500,000, that reductions had almost stood still, and that we were approaching a new Financial year with our Cash Balances nearly exhausted, and our Expenditure £5,500,000 a-year ahead of our Income, was indeed calculated to inspire gloomy apprehensions.

Nor were these apprehensions relieved by the aspect of the Railway question, which showed at least £20,000,000 to be wanted in the next three years to complete lines of the first necessity, for which capital no provision had yet been made, and which the Home Government would probably be compelled to borrow.

All idea of help from England for general Expenditure was therefore clearly out of the question, and it was even doubtful whether funds could be provided to save us from the serious disaster of having to suspend Railway works which were approaching completion.

Well, there yawned the Deficit of £5,500,000 wide and deep. There was no chance of craning, no time to look to the right or left, for the exhausted Cash Balances, hungry and inexorable, were howling in our rear.

To stick the spurs well in, and go straight at it, was the only plan.

Before I ask you to follow me, let me pause for a moment and make one remark. I have said that this was no occasion for personal observations, but there is one which I am anxious to make, lest I should be misunderstood.

I have described a gloomy state of things. I am now going to show you a brighter picture. In making a lengthened statement, it is not always possible to avoid speaking in the first person, and thus appearing to claim for myself individually the credit of acts of the Government.

I wish emphatically to repudiate any such claim.

Mr. Laing

In a Government like that of India, it is manifest that the Governor-General must be, for good or evil, the mainspring of all policy.

It is not for me to speak of Lord Canning. When a man has filled such a post in such times, his character belongs to History. But this I may say without indiscretion, that if any one has represented His Excellency as lukewarm and indifferent in the cause of reduction, he is entirely mistaken.

From the first time I met him in India, down to the present day, Lord Canning's language to me has been the same—that he would carry out any practicable amount of reduction rather than inflict new and oppressive Taxes on the people of India.

Nor should I be doing justice to my colleagues in the Council, if I omitted to state that they have been, one and all, and on all occasions, animated by the same spirit. Indeed, it stands to reason, that so much could not have been done in so short a time, if the ground had not been tilled, and the crop sown, and all but ripened by their exertions.

Sir, as far as I have seen, all concerned have done their duty, but among the many able Officers and Servants of the State, who have given us their aid and co-operation, there is one body whose services have been so pre-eminent, that I should be wrong not to mention them.

I mean the Military Finance Commission, whose Members have laboured, often under difficulty and discouragement, with a zeal, an industry, and an intelligence which are indeed beyond praise.

If the future historian of India should have occasion to mention, that in the year 1861 India was saved from a great Financial danger, that history will be very imperfectly written if it omits the names of Colonel Balfour, and his colleagues, Mr. R. Temple and Colonel Simpson.

Nor would I willingly omit to mention the name of Captain Rennie, to whom, in conjunction with the Civil and Military Finance Commissions, it is mainly owing that we have been

able to effect important reductions in the Navy and Marine.

I return now to my figures. Recollect the Deficit is £6,000,000, and the problem is how to meet it.

In my experience of public life, I have always found this maxim hold good—that there is no such thing as an Art or Mystery in State Craft.

The broad principles of common sense, which apply to private, apply equally to public affairs, and that which is not simple is seldom sound.

Well, if a private individual finds that his balance at his Banker is running dry, and that he is spending beyond his Income, what does he do? He cuts down his Expenditure—this is what we have done. We have reduced our Expenditure by £3,600,000.

Recollect, in 1859, we reduced our Expenditure from the War standard by £3,500,000; in 1860 by £500,000; and in 1861 we shall reduce it further by £3,600,000.

That is a great result, and I will now explain how we arrive at it. The great reduction is of course in the Native Army. Here was the greatest excess—here the greatest scope for economy.

In April 1857, or immediately before the Mutiny, it appears from Official Returns, that the total established strength of the Indian Army, including Queen's Troops, was—

Europeans.....	45,522
Natives	266,852

The cost of this Army was in round numbers £11,500,000 a-year in India, and £1,250,000 in England; but this was below the proper cost, as it was only attained by allowing the "Effective" European Force to remain dangerously below its "established" strength. The real cost should have been about £12,000,000 in India, and £1,500,000 in England.

In 1858-59, owing to the Mutiny, this cost rose to £21,000,000 in India, and £3,750,000 in England, showing a total increase of £11,000,000 on the Expenditure of 1856-57, to which should be added an increase of £1,000,000 for Military Police.

This was the *maximum* point at which reductions began.

In 1859-60 the Military Expenditure in India was reduced to £17,750,000, and in England to £2,750,000, making a total reduction of £4,250,000. In 1860-61 the Expenditure in India was £15,279,000, in England £2,750,000, showing a further saving of £2,500,000, which, as I explained just now, has been swallowed up by the increase of interest on the Debt and other charges, and which still left the cost of the Army of India £5,250,000 more in 1860-61 than it was in the year before the Mutiny.

This Army consisted in 1859, according to a Return of the Military Finance Department which I hold in my hand, of 284,529 men, exclusive of 69,254 Military Police—or in all of 353,783 armed Natives. We had, therefore, at the commencement of 1860, 60,000 more armed Natives in our pay than in 1857, in addition to the increased European Force, and the increased cost of our Army was £5,250,000 a-year.

Now, how has the Government dealt with this state of things?

In the first place, they have decided that there shall be no hybrid Corps, like Military Police, which really swell the Native Army without appearing on its roll. At least 50,000 men of Military Police and Miscellaneous Local Levies have been disbanded, or are in course of disbandment, and with the exception of about 8,000 Military Police in Bengal, who have been retained for the present for special reasons connected with the organization of a Constabulary in that Presidency, you may say that nothing of this sort remains in India. When we say "Army" we mean "Army," and when we say "Police" we mean "Police"—Constables with batons under Civil Authority, and not Sepoy Regiments under a new name.

Next, we have reduced all Native Infantry Regiments to a uniform force of 600 Privates, or 712 Natives of all ranks per Regiment.

Finally, we have broken up and disbanded Regiments.

Upon this point I think the Government of India has hardly done itself justice in not making public some

comprehensive view of the extent of reductions effected.

In Bengal there were, in 1857, 146 Regiments of Native Infantry, in 1859 the number was 98, in 1860 it was reduced to 91; and of these 8 are under orders for disbandment, and an order for reducing 11 more has been passed and will appear in a few days in the Gazette, bringing the number to 72 Regiments, or less than half the number before the Mutiny.

Madras, before the Mutiny, had in all 55 Regiments of Native Infantry, including 2 of Veterans and 1 Pegu Battalion. The number was raised in 1859 to 62 Regiments—it is now 53 Regiments.

Bombay had 34 Regiments before the Mutiny. In 1859 there were 40. Of these 6 have been disbanded, and orders passed to disband 4 more.

As regards Native Cavalry, Bengal had, in 1857, 50 Regiments. In 1859 there were 56 Regiments. At present there are 43, and orders have just passed for disbanding 11, leaving the total number 32. This includes all Native Cavalry of the Punjaub, Central India, and elsewhere, as well as those under the Commander-in-Chief. Madras had 8 Regiments of Native Cavalry in 1857; the number has been reduced to 4.

Bombay had 9 Regiments in 1857. These were recently converted into 14 Regiments of reduced strength, on the Irregular Footing, which will be reduced to 9, or lower.

I say nothing of Native Artillery, for no such thing exists, except a few Mountain Batteries at unhealthy posts on the frontier.

The result is, therefore, that 77 Native Regiments are broken up since 1859, *viz.* 44 of Infantry and 33 of Cavalry.

Of these, 24 Regiments of Infantry, and 20 Regiments of Cavalry, are the result of the reductions now ordered, or enforced within the last few months.

The effect of these reductions is to lower the strength of the Native Army from 284,000, at which it stood in 1859, to about 140,000 men.

Including Military Police, the reduction of Native Armed, Force since 1859 will be very nearly 200,000 men, of whom upwards of 100,000 men have been reduced within the last few months.

I should mention that, in effecting these reductions, it has been thought right to make some addition to the pay of the Irregular Native Cavalry, who find their own horses and provisions. Prices have risen so much, that it is difficult for them to keep out of debt on their old pay, and soldiers in debt are always dangerous. But I place it on higher grounds. It is the duty of the State to treat liberally men who are ready to shed their blood for us in case of danger, be they Hindoos or Mussulman, English or Native—here at least the maxim should apply that the labourer, while found faithful is worthy of his hire.

I spoke of the above reductions as carried out, because they are so in a great measure; and what remains is distinctly ordered in a manner which admits of no discussion. Madras has taken the lead in reductions, but Bombay is well up, and Bengal, as you will see, is coming with a rush, and will perhaps, make a dead heat of it on the post.

The Military Finance Department, who are constituted as a permanent Department of the Supreme Government, to see to the enforcement of all that relates to Estimates and Military Finance, give us means, like those which the Treasury and War Office in England possess, of ensuring the observance of Estimates, and of checking Expenditure.

So much for our Native Army.

In our European Force, no material change is proposed on that now existing.

Concurrently with these reductions of Force, we have made corresponding reductions in the Commissariat, Ordnance, and other Military Departments, and in the Expenditure on Barracks. The general result is that our Military Expenditure of all sorts, including Military buildings, will be reduced, from last year, by £3,220,000.

Our Estimate of Military Expenditure in India for the year 1861-62, which has been revised with great care by the Military Finance Department,

is £12,800,000, or £2,479,000 lower than in 1860-61. But this does not show the whole amount of permanent saving. as the reductions cannot all be carried out by the 1st of May, and Native Troops cannot be disbanded without gratuities.

The Estimate of this Military Finance Department is £12,199,242 as the cost for a year of the Establishment now decided upon for permanent adoption, and £600,760 as the temporary cost for this year in Gratuities, Bounty, Pay, and other expenses, before the reductions are fully carried out.

It is right to state, however, that for £500,000 or £600,000 of this reduction, we are indebted to a suspension of the usual demands for Stores, owing to the vast accumulations of recent years.

I am sanguine, however, that when the new Police is fully organized, and after another year or two of peace and tranquillity, the Native Army may be still further reduced, and the total Expenditure in the Army kept at £12,250,000, or even brought down to 12 millions in India, and 2 millions in England.

In the meantime, our actual reduction for the ensuing year is £3,220,000, but of this £409,000 is in Military Buildings, of which we give the benefit to Civil Public Works.

In this Estimate of Military Expenditure, I have only allowed for a small decrease on the Home charges, proportionate to what we know of the actual diminution of numbers in Depôt, *viz.* from £2,772,610 in 1860-61 to £2,500,000 in 1861-62.

But I hope and believe the reduction will be much larger.

It is perfectly manifest, that the officers and men, belonging to Indian Regiments in *Depôt* at home, are as much a reserve for England as for India. In the event of any sudden and serious danger threatening England, there is no doubt that these Troops would be available there, and it is not fair that India should pay the full cost of the Reserve Establishments in England under such circumstances.

The day is past when England can consider India as a sort of milch-cow, on whom to draw for a little here and a little there, in order to round an English Budget, or ease an English Estimate. Strict and impartial justice must be the rule in all money matters between England and India, if England wishes to get a return for her capital, which will soon amount to £100,000,000 invested in Indian Securities and Railways, and if she wishes to see India become, every day, more and more, the best source of supply for her raw produce, and the best market in the world for her staple manufactures.

I know that arrangements are pending at Home, by which we hope to commute all charges for Depôts or otherwise, for a fixed sum per head for every soldier in India ; and if a fair settlement is made, I look for a considerable further reduction on the Military Estimate.

In reducing the expense of the Army, we have not been unmindful of the Sister Service.

The Indian Navy cost nearly £1,000,000 a-year, and what was there to show for it ? It is no disparagement to the well-known courage of our gallant Indian Navy, to say that the whole fleet could not stand a single broad-side from a man-of-war of modern construction and armament. In the event of a Naval war, we must trust to Britannia to rule the seas, and really, in these hard times, India cannot afford to go on paying a million a-year for the honor and glory of having a Navy of her own, which is no real protection.

Nor does it seem the wisest of policies to run Government Steamers on our rivers, competing with Railways and Steamers, of Companies, on whose capital we are guaranteeing 5 per cent. Accordingly the axe has been laid to the root of that tree, and our Budget of 1861-62 shows, by way of commencement, a reduction of Naval and Marine charges, £536,000 from £856,070 as it was last year, and £1,000,000, as it would have been, with no reductions, now that our steamers have returned from China.

This reduction will, I hope, be carried still further, when arrangements, now

pending, are completed, by which a small but efficient force of the Royal Navy shall be constantly stationed in the Indian Seas, which will give us much more security against any possible hostile attack than we have ever hitherto had.

Nor have we been unmindful of economy in our Civil Expenditure.

The first four heads of the Abstract of the Budget Estimates, which I hold in my hand, comprise the Cost and Charges of collecting the Revenue, Civil and Political Establishments, Law and Justice, and Police, which include the whole cost of Civil Administration in India, except for Public Works.

The aggregate of these four heads is £14,864,004 in 1861-62 against £14,876,389 in 1860-61, showing a decrease of £12,385, instead of the large increase which has been steadily going on of late years.

But this gives a very inadequate view of the real saving in Civil Administration, for the Charge in 1861-62 includes £350,000 more than in 1860-61, for the increased cost of Opium, Salt and Income Tax, and £150,000 for contingencies connected with the Famine, for none of which is Civil Administration proper at all responsible.

The total Charge would, therefore, have been £500,000 more in 1861-62 than in 1860-61, had the cost of Civil Administration remained the same.

But it is £12,385 less, so that the saving in Civil Administration cannot be taken at less than about £500,000.

For this large reduction in Civil Expenditure, we are very much indebted to the Civil Finance Commission, who have aided us in reducing outlay, rooting out abuses, and revising Estimates, with the most meritorious zeal.

A portion of this has been effected in the Police, which, under the old system, was both costly and inefficient, and here the assistance of the Police Commission has been of the greatest value. But there has also been a saving in a variety of minor Departments, which, although small in the individual cases, amount up to a large sum in the aggregate.

The system of Budget Estimates has already afforded us valuable means of checking this sort of Expenditure in detail, and I have no doubt that it will be found, every year more and more, an efficient instrument for checking extravagance, and enforcing a wise economy—an economy which, let me observe in passing, is only to be attained in conjunction with efficiency, and is wide as the poles apart from anything like shabbiness and stingyness. A Government, to be well served and generally respected, must never do a sharp and screwish, or a mean and illiberal act, or, depend upon it, the paltry saving of to-day will come back, with ten-fold expense and hundred-fold discredit, on the morrow.

I may as well observe here, that the Estimates, of which I now give the general results, are all taken from the detailed Estimates settled under the new system, of which such portion as may be useful for public information will be presented and printed as soon as time permits, so as to enable those who take an interest in such matters, to trace details of Expenditure under different heads and in different Governments.

The next head of Expenditure in my Budget, shows an increase, not a reduction, but I think you will pardon this when I say that it is for Civil Public Works.

The Imperial Assignment for Civil Public Works is £3,121,129 in 1861-62 against £2,897,671 in 1860-61, or £223,458, increase; in addition to which £230,000 more will be spent next year than this from local funds, and the amount required for repairs is smaller, so that on the whole the Expenditure on new works of improvement will be about £500,000 more in 1861-62 than in 1860-61.

Of this a large portion will go in making roads, which I believe to be, as a general rule, the most advantageous way of spending money in most parts of India.

We shall especially urge on the construction of good roads in the principal Cotton districts, so as to be prepared to bring the resources of India into play to supply the threatened deficiency

of Cotton from America. Immense interests are at stake on this question, not only material, for who can measure the extension of Commerce, and the mutual benefit to England and to India which would result from a transfer of the chief supply of Cotton from America to the East; but moral also, for the issue for which Wilberforce contended, and for which England has sacrificed her West Indian Colonies and poured forth her millions like water,—the issue of Slavery or Freedom is staked mainly on the question, whether America's danger is to be India's opportunity. If Cotton, produced by free labor, can undersell Cotton the produce of Slavery, then, and not till then, the cause of Freedom is finally gained.

Private enterprise, and private enterprise alone, can decide this great issue, but the Government have certain duties to perform, and they will not perform them negligently. To press on the construction of roads and communications; to pass just laws for the enforcement of contracts; to provide ready tribunals for dispensing justice; to impress on all connected with them the importance of encouraging independent English enterprise by every means consistent with justice, and with the equal rights of our native subjects—these are within the legitimate functions of Government; and you may depend upon it, Sir, that it shall not be said of us, that Slavery triumphed and India missed its opportunity, because its Government was too blind to discern, or too weak to carry out, the policy which, at a great crisis, Providence had clearly pointed out to us.

In addition to roads, we shall spend more money on Canals, and especially in developing those works of irrigation in connection with our Great Canals, which have proved of such infinite value in averting the consequences of the Famine. Colonel Cotton has truly said, that Water is Gold in India; it is more than Gold, it is *Life;* and among the most lamentable consequences of our Financial embarrassments, has been the necessity of starving works, which convert Famine into Plenty.

I have now gone through all the principal heads of Expenditure, except for Railways. I shall have to pay about £100,000 more than last year for guaranteed interest, after deducting net Traffic Receipts, the increase of Traffic not having kept pace with the increase of Capital paid in by the Companies.

But I shall save the £473,334 set down last year for loss by Exchange on Railway Capital, for, as nearly as I can estimate, the interest due by Railway Companies on advances made by Government, will balance any loss by Exchange from further payments under existing contracts, and I take it for granted, that the Home Government, on whose attention it has been urged, will not think of extending a single contract with this most objectionable Clause.

The interest on Debt has increased by £313,299, owing to the recent Loan in England, and a full year being payable in the whole of the 5½ per Cent Loan in India.

I thus arrive at the general result of a total Expenditure for the year 1861-62 of £41,554,699, as compared with £45,154,449 in 1860-61, showing a reduction of £3,599,750.

I proceed now to the other side of the account, to show what my Revenue will be to meet this Expenditure.

LAND REVENUE.—The total Revenue for 1861-62 is £18,951,156 against £18,762,447 in 1860-61. This increase has arisen, notwithstanding a loss of £360,000 in the North-West and Punjaub, owing to the Famine, in consequence of sales of lapsed Estates in Bengal, and of a general slight increase in districts unaffected by the Famine.

Including the loss of Land Revenue, the grants for relief and the cost of extra works in the suffering districts, the total loss by the Famine in this Budget may be taken at about £600,000.

INCOME TAX.—The estimated Receipt for 1861-62 is £1,948,094, but this is not a fair representation of the produce of the Tax for a year, as it includes a large amount of arrears from the previous year. The gross

annual produce of the Income Tax may be taken at about £1,750,000, from which must be deducted the cost of collection, say 10 per cent., and the loss on the Moturpha and Trade Taxes in the Punjaub and Oudh, which are partially superseded by the Income Tax, amounting to £186,827, leaving £1,389,000, or say in round numbers £1,400,000 as the net annual produce of the Tax.

CUSTOMS.—An allowance of £200,000 has been made for a falling off in the Import Duties on British Manufactures at Calcutta and Bombay, owing to the dulness of trade; but this is made up by the increase of the Salt Duty, and the buoyancy of various minor receipts from Customs, especially on the Inland lines.

A further allowance of £40,000 is made for a reduction of the Duty on imported Twist and Yarn from 10 to 5 per cent. The Duty was raised last year by Mr. Wilson, who estimated the gain to the Revenue at £67,000, but it has only amounted to about half that figure, and no one can doubt that it is a Duty which ought not to be maintained at a rate which might stimulate the growth of a protected interest.

The principle of free trade is to impose taxes for purposes of Revenue only, and if Yarn be a fit subject for taxation, there ought to be an excise on the native manufacture, equal to the Customs Duty on the imported article, unless the latter be so small in amount, that it would be palpably not worth while to establish a counter-vailing system of excise.

With a 5 per cent. Import Duty this might be the case, but at any higher rate, untaxed native Yarn would manifestly be a protected article, and any interest which might grow up, would infallibly share the fate of other protected interests, and find itself, at some early day, left to struggle with foreign competition.

I wish I could at once reduce the Duty on Piece Goods and other manufactures from 10 to 5 per cent., but, unfortunately, the amount of Revenue is too large to enable me to propose it without imprudence. Looking at the precariousness of the present high price of Opium and the possible contingencies of the Famine, I should not be justified in parting with £400,000 of Revenue, without seeing, very clearly, how I could replace it.

But that is no reason why I should not at once deal with Yarn where the amount is small, the failure of the high Duty palpable, and the case urgent, because parties are actually building mills and importing machinery on the strength of the high Duty.

If, upon equal terms, those parties can compete with Manchester, by all means let them do so; but it would be unfair to induce them to invest Capital on the faith of a protective Duty, which certainly could not be maintained for a couple of years.

SALT will show a large increase, *viz.* from £3,391,630 in 1860-61 to £3,980,000 in 1861-62.

In 1859, the rates of Duty on Salt were as follows :—

Bengal ...	Rs.	2	8	0	per Maund.
Madras ...	„	0	14	0	„
Bombay ...	„	0	12	0	„
North-West.	„	2	0	0	„
Punjaub ...	„	2	0	0	„
Oudh ...	„	2	0	0	„

The Government then proposed to raise the Duty generally by 8 annas per maund, but after some correspondence with the Local Governments, the following rates were adopted :—

	Rate adopted.			Increase on old rate.		
	Rs.	As.	P.	Rs.	As.	P.
Bengal	3	0	0	0	8	0
North-West and Oudh	2	8	0	0	8	0
Madras	1	0	0	0	2	0
Bombay	1	0	0	0	4	0
Punjaub	2	2	0	0	2	0

The expectation of increased Revenue has been fully realized.

The produce of the Salt Duties (exclusive of imported Salt) rose from £2,602,000 in 1858-59, the last year of the old Duties, to £3,391,000 in 1860-61,

showing an increase of £789,000, to which must be added about £100,000 for the increase of Duty on imported Salt, levied through the Customs.

The slight increase of Duty, therefore, imposed in 1859, and which I believe no one has felt, has produced nearly £1,000,000, or two-thirds as much as the Income Tax.

The fact is, the increase of Duty had no effect whatever in checking consumption. The amount per head, or for each family, paid for Salt, is, as Mr. Plowden conclusively showed in 1855, very slight, and the general rise of wages and increase of prosperity have made this slight amount comparatively still slighter; so that a large increase of consumption has gone on concurrently with an advance of Duty.

In Madras the Returns show an average consumption of 480,000 maunds a month, for the sixteen months since the Duty was raised, as against 456,000 maunds per month, for the corresponding period under the old Duty.

In fact, a rise of Duty of 12½ per cent. coincided with an increase of consumption of 5 per cent., and the Revenue gained 15 per cent.

In Bombay an increase of 33 per cent. on the Duty raised the Revenue 36 per cent., showing here also an increase of consumption.

In Bengal the result was still more favorable, and in the North-West the result was extraordinary, showing an increase of no less than 30 per cent. in consumption, coincident with a rise of 25 per cent. in Duty.

In the face of facts like these, there could be no reasonable doubt that a further slight increase may be borne, without oppressing the people or checking consumption, especially as the approaching opening of the Railways will, in many cases, cheapen the price of Salt in the interior.

It would not, however, have been wise to hazard the results already obtained, by too large an advance so soon after that lately made.

Accordingly, after consultation with the local Governments, the following additions have been made, *viz.* :—

In Bengal, Bombay, and Madras, 4 aanas per maund, raising the Duty to Rupees 3-4 in Bengal, and Rupees 1-4 in Madras and Bombay.

In the North-West and Oudh 8 annas, raising the Duty to Rupees 3, and doing away with the preventive line at Allahabad.

In the Punjaub 1 Rupee, assimilating the Duty on this side of the Indus to that on the North-West.

In Nagpore Rupees 1-8 and in Sinde 1 Rupee per maund will be imposed where no Duty now exists.

A corresponding increase is made in the Customs Duties on imported Salt.

The effect of these additions of Duty, estimated on the actual rate of consumption, with some allowance for a possible falling off, though I see no reason to anticipate any, gives me an additional revenue of £598,370.

OPIUM.—Bengal Opium has only been taken at the same figure as last year, though the actual market price is Rupees 600 per chest higher, which would warrant an increased Estimate of fully £1,500,000.

An increase on Bombay Opium is taken of £468,000, owing partly to the increased Duty of Rupees 100 per chest, to take effect from October, and partly to the increased number of passes over last year's Estimate, which are expected from the present crop, and will be realized either before the 1st May, or soon afterwards.

As there is no prospect of any material increase of the supply of Bengal Opium in the coming year, I see no reason why the present high prices may not continue for some time, and if so, we shall unquestionably realise a much larger sum from Opium than is put down in this Estimate.

STAMPS.—The Estimate for 1861-62 is £1,216,040, which is £383,370 more than last year and £557,052 more than in 1859-60, which was the last complete year of the old Duties.

This increase is very satisfactory, and in fact the additions made to the Salt and Stamp Duties last year, have

yielded a larger Revenue than the Income Tax.

MISCELLANEOUS.—The different heads of Miscellaneous Receipts show a falling off from last year of £750,000.

This arises from certain wind-falls in 1860-61 not being repeated For instance, £340,000 was received in one sum last year from the Rajah of Putteala, on account of certain Ceded Districts, which of course does not recur. The other heads of Revenue are as nearly as possible the same as in 1860-61.

The general result is, that the Revenue of 1861-62 will amount to £41,294,595 as compared with £39,285,731 in 1860-61, showing an increase of £2,008,864.

My Expenditure was £40,254,699, without Railway interest, or £41,554,699 with it. So that, in the former case, I should have a surplus of £1,039,896—in the latter, a deficit of £250,104.

In 1860-61 the Deficit, exclusive of Railways, was £4,176,544, and with Railways, £5,868,718.

On the strictest principles, a large portion of the difference between the £1,800,000 paid for guaranteed interest, and the £550,000 of net Receipts from opened Railways, is chargeable to Capital.

It might even be contended that a portion of the large Expenditure on Canals and other re-productive works is so chargeable, but as regards at least £1,000,000 of the charge for Railway interest, there can be no doubt that it is as much a charge against Capital as the cost of making the line.

This shall properly be shown in the accounts, but, on the whole, I think it more prudent for the present to provide for it as current Expenditure.

The charge is likely to continue for several years at least, the money must be paid, and I think it extremely important to show that we have no arrears, and that henceforward our Receipts for the year will honestly cover all our Expenditure.

I think this specially important for the following reason.

The fear of new taxation is often worse than the reality of new taxes.

In all countries, and more especially in a country like India, it is most undesirable to keep the minds of the people constantly harassed by an indefinite apprehension of fiscal changes.

Now there is no guarantee that a Government can hold out against new Taxes as long as it has a Deficit. The money it must have to pay its way, and as it cannot borrow for ever, new Taxes must be tried if the old ones do not suffice. But if the old Taxes do suffice, no sane Government will risk unpopularity by resorting to new ones, and the Nation may rely confidently that, if any change be proposed, it will be in the pleasant form of reduction.

Now, if we fairly extinguish our Deficit while we are about it, including the Railway interest, I think we may say that we shall be in this position.

It is true that the high price of Opium is precarious, and that our Customs Duties are in some cases too high. But I hope and believe that further reduction, especially in Military Expenditure on the Native Army, will be found practicable; our Land Revenue would at once improve on the cessation of Famine; the Salt, the Customs, the Excise, the Stamps, and other branches of Revenue cannot fail to increase with the opening of Railways, and with the increased trade and prosperity of the country.

On the whole, apart from wars, of which I cannot see any present prospect, or from some sudden calamity, like a great Famine, which is in the hands of Providence, I may truly say that, as far as I can see, if we honestly extinguish our Deficit now, no Chancellor of the Exchequer need ever be sent again from England to India to devise new Taxes. That part at least of his mission will be gone, and, with Prospero, he may bury his magic wand certain fathoms deep, and renounce his Art.

Do you then go with me in saying that, after having fought so many, and I fear such weary rounds, with this huge bully Deficit, we shall not let him claim a cross, or call it a drawn battle? If so, in the language of the Ring, let us go in and finish.

Or, if you prefer, an Indian simile. As this tremendous tiger has given us such a fright, let us pour a parting shot into his carcase, to finish him off effectually, and make assurance doubly sure.

The means are ready to my hand in the License Tax, which has been so long announced, and so nearly passed into a law, that nothing remains but to read the Bill a third time. Every one, I believe, expects it, and has long looked upon it as part of the Financial scheme announced by the Government; but I must confess that I feel great reluctance to proceed with it until I can combine it with an amendment of the Income Tax, so as to make the united measure one of relief and satisfaction to India, rather than of oppression and burden.

I have told you frankly that, financially speaking, I think the Income Tax has been a failure. It lays down a great and just principle that the capital and trade of India, as well as as her land, shall contribute, in a fair proportion, towards the support of the State. From that principle I believe no Government of India will ever recede, and as regards incomes, which are fixed and certain, and can be ascertained without prying into people's private affairs, there is no fairer mode of applying it than by a percentage on the amount of income.

But when you come to trading and professional incomes, or incomes which cannot be ascertained, without calling for complicated returns and instituting private enquiries, I believe that some fixed scale of assessment under a graduated License Tax, is a better mode of applying the principle.

I would almost lay this down universally, for I think it is a fatal objective to a tax, that it conduces to extensive demoralization by holding out a premium to fraud, and that its inevitable tendency is to embark the Government in a constant warfare with a large section of its subjects—a warfare carried on by vexatious petty interference and inquisition on the one hand, and by evasion and chicanery on the other.

Certain I am, that India, at any rate, is no place for such a Tax on incomes going as low as £20 a year, and that the Government would be wanting in their duty if they did not address themselves to the task of endeavoring so to amend this portion of the Income Tax, as to raise the necessary revenue in a manner less open to objection. Such an amendment could not be introduced as part of the present Budget, for obvious reasons; but I hope, before long, to be in a position to mature a measure, and until that is the case, I am anxious, as I before stated, to keep the License Tax in reserve, and not impose it in a crude form as a separate measure, without compensation or equivalent.

To raise even £600,000 by the License Tax, we must send the tax-gatherer to 4,000,000 doors, or, in other words, must affect 20,000,000 of our population.

That is a serious matter, and, although I should not shrink from it in case of necessity, I confess that I should prefer making the License Tax part of a general scheme for mitigating the Income Tax, and moulding the two together into a system more simple, satisfactory, and congenial to native habits and wishes.

Well, then, I hear you say, "How about the Deficit? Is it to be a drawn battle after all, or a stale-mate, when we thought the next move would win the game?"

By no means. I have a move in reserve, which I think will effectually check-mate him.

I invite your particular attention to this, which I hope is the concluding part of my statement, for I consider it to be the most interesting, as it is the most novel feature of the Financial Scheme of the Government.

I want about £500,000 fairly to weather my Deficit, and get into smooth water with a small surplus.

The obvious resource would be, to dock it from Public Works.

The Government, as I have already shown, have been so far liberal to Public Works of a useful nature, as to propose to give them £500,000 or upwards more than last year.

But if we have not got the money, we cannot give it, and therefore we should be very reluctantly driven to curtail Roads, Canals, and other useful works of this description, to the allotment on which, they have been carried on, or rather I should say, starved since the Mutiny.

Now, this would really be most lamentable. It is heart-breaking to hear of districts barren for want of water, where water is to be had; of roads half finished and abandoned: or finished but useless, for want of some bridge which has tumbled down.

India has two great wants—irrigation and communication.

I do not mean grand schemes only which strike the imagination, so much as village roads and village tanks and water cuts, which enable every rood of ground to grow its crop and send it to market.

Such works we are most anxious to encourage, and accordingly, instead of simply curtailing the Imperial allotment to local Governments, we say to them—"Take what we are able to give you, and for the residue take certain powers of local taxation and raise it yourselves."

There are certain subjects which can be dealt with far better by local than by Imperial Taxation. For instance, tobacco. The discussion on this subject last year, and the Returns from the various local Governments, prove distinctly, that there is no scheme of uniform and Imperial Taxation, applicable alike to all India, short of a Government monopoly, to which there are grave objections, under which we could hope to obtain any considerable Revenue.

In one province the system of land tenure makes an acreage tax difficult; in another, the vicinity of a Native State throws impediments in the way of an excise; in a third, the general cottage cultivation makes licenses, at any thing beyond a nominal rate, almost impracticable.

But many of these Provinces could raise a considerable Revenue, without sensible pressure, from tobacco, if left to deal with it in their own way, and under a system which might vary in case of need, so as to suit the peculiar circumstances of each district.

Well, we say to them, take tobacco and make what you can of it, for your local roads and canals, instead of the allotment which we wished to give you, but could not afford, from thet Imperial Budget.

The same principle applies to other subjects of taxation.

We place no limit upon it, except this, that every proposal for local taxation shall be subject to the sanction of the Governor-General in Council, and of the Legislative Council when a law is required, in order to see that it is not inconsistent with Imperial taxation or with Imperial policy.

For instance, suppose a certain town, being anxious to get a road made, proposes to have an octroi, and the local Government adopts the application.

The Supreme Government examines the scheme to see that there is no transit duty on General Trade, which would be contrary to public policy, and injurious to other parts of the Empire.

But if it is a mere octroi, and the question is simply whether the inhabitants of a given town shall, for a time pay a little more for their eggs and poultry in order to get a road, that is their affair, and we sanction the tax.

This is only one illustration, but there will be many such cases, as people will regard with very different eyes a temporary local Tax, levied for some object of undoubted advantage in their own district, and a general tax, which goes into the remote and unfathomed gulf of the Imperial Exchequer.

We have already received, from several local Governments, the most satisfactory assurances of their ability and readiness to raise considerable sums by small and comparatively unfelt local Taxes for local objects.

I think, therefore, that by this means, not only will the Imperial Budget obtain the requisite relief, but more money will, on the whole, be raised and expended on useful local works.

This, however, by no means comprises the whole scope and object of the measure.

By enacting local Budgets, the Government hope not merely to meet a temporary difficulty, but to inaugurate a permanent improvement.

It has long been a standing complaint with other Presidencies and Provinces, that they were deprived of their fair share of self government, and kept in a state of galling and humiliating dependence on the *bureaux* of Calcutta.

Well, Sir, the power of the purse is the ultimate power, and as long as local Governments are absolutely subservient to Calcutta in Financial matters, it is evident that they can have no real independence.

But if, without sacrificing in any way the unity of the Empire and Imperial control in Imperial matters, we give them local Budgets, their position is altered.

We propose to give them not only powers of local taxation, but possibly to credit them with a liberal share of reductions of Expenditure, which they may be able to make on the Estimates of the General Budget.

Each Government will therefore have a direct interest in economy, in order to increase the fund applicable to local works, and I cannot fancy that Madras, for instance, will long continue to spend £160,000 a-year in Public Works Establishments to look after £460,000 a-year of Expenditure upon actual works, where it is apparent that every £1 extra spent on Establishments means £1 more to raise by local taxes, or £1 less to spend on Roads and Canals.

It is obvious that such a system of local Budgets would harmonize extremely well with what I hope soon to see adopted, namely, Local Legislative Councils at the Presidencies.

It would at once give them an appropriate and dignified position, and I can imagine nothing more useful than that the details of a local Budget, such as that of Madras or Bombay, should be submitted to the intelligent scrutiny of a Council, comprising both experienced officials, and picked representatives of the Mercantile and Native Communities.

I think also the scheme would greatly foster the growth of Municipal institutions, and of what is still more important, of the spirit of local self-help and self-guidance, which is at the bottom of a nation's greatness.

India is not altogether devoid of that spirit of self-government which characterises the Anglo-Saxon. In her village communities and her punchayets, we find traces which may remind us that Hindoo, as well as Englishman or Teuton, are descended from a common stock of Arian ancestors.

But the Hindoo has been enervated by climate, harassed by wars, oppressed by bad Government, isolated morally by caste and physically by want of communication, until these germs have been almost extinguished.

The consequence is that India has never, within the period of history, been a nation. It has been an aggregate of various tribes, distinct communities, and petty despotisms, of which now one, now the other, shot up into ephemeral importance or decayed, with the accident of the hour, with the success of some military adventurer, and the degeneracy of his heir.

Let us hope that it may be ours to found something more lasting, and to show that as our power is now without a rival, or the shadow of a rival, from the Himalayas to Cape Comorin, and from the Irrawaddy to the Indus, it is a beneficent power to be exercised firmly and wisely for the good of the millions over whom Providence has placed us in authority.

I have a vision of an India—where the science of the West has removed impediments to communication; where the consequent increase of trade has diffused material prosperity; where English energy and capital stimulate improvement in every district; and where the native population, with expanding ideas and improving intelligence are taught by the education of schools and of events, of books, and Railways, to know us, and to know one another; and are gradually trained in the management of their own local affairs for those of a wider area; so that India may at length have what it has never yet had—a political life, and at

length be, what it has never yet been—a nation.

You may say that this is a vision, and this much is certain, Sir, that neither you nor I will live to see it fully realized; but I reply that it is something for a Government to have a policy, a high and distinct, though distant, aim, and I think I may safely say that this is an aim in which every enlightened Hindoo and Mussulman, as well as every enlightened Englishman, may cordially unite with us and join us in praying in the words of the inspired Psalmist, "that our works may be so done in truth and equity, as to stand fast for ever and ever."

If, Sir, we have succeeded even tolerably in restoring our Finances and conjuring away that spectre Deficit which rode upon us like the grim nightmare hag of the old Norse Saga, I rejoice in it, not so much for the immediate relief, as because I hope and believe that it is an earnest of further improvement.

If six months have sufficed to get rid of six millions of Deficit, I see nothing of which the Government of India need despair, with energy and decision, with prudence and clear insight. Success like failure is contagious, and in Politics, as in War, the moral causes are to the physical, as the Great Napoleon said, as ten to one. Therefore, Sir, in addressing ourselves, to further reform, the word *impossible* shall be banished from our vocabulary, and we shall succeed, because we have succeeded already, and because we are determined to succeed again.

And now, Sir, nothing remains but to thank you and the Council for the patience with which you have listened to me, and to sum up in two words the result which I had laid before you.

The Deficit was £5,868,718. We have met £3,599,750 of it by reductions, £2,008,864 by improved Revenue, and £500,000 by transfer to local Budgets.

Therefore, I have a clear surplus of £239,896 of Income over Expenditure, including in my Expenditure £1,300,000 on account of Railway interest, which is properly chargeable to Capital.

My Cash Balance in India, on the 1st May next, will be £12,850,000, which is higher than was expected, partly because the Receipts from Opium have been large, and partly because recent reductions of expenditure are beginning to tell.

After allowing for the payment of £950,000 of Prize Money, and for an Expenditure of £500,000 per month, or £6,000,000 in the course of the year upon Railways, it is estimated that we shall arrive at the 1st May 1862, with a Cash Balance of £14,264,302. I shall want no loan, therefore, as far as I can see at present, unless something altogether unexpected should occur, which I have no reason to anticipate.

There is no danger of the Railways now in progress being suspended, though strict economy must be enforced in making the money go as far as possible in opening additional miles of Railway, and not in costly works or ornamental stations.

These results, let me once more repeat, have been obtained mainly by enforcing economy. On the continued enforcement of that economy, the future welfare of India mainly depends. I have been careful, as far as as possible, to adopt no figure in my Budget which was not based on positive facts, and on the Estimates of the responsible authorities. As regards the Military Estimates, which are the most important, Colonel Balfour and his colleagues in the Military Finance Department have gone through them in minute detail, and pledge themselves for their sufficiency, provided the orders already passed by the Government are properly carried out.

That is our affair, and you may depend upon it that, with the welfare of India and our own credit at stake, we shall take good care that we are promptly obeyed.

I anticipate no difficulty, for I have always heard, that in the ranks of the Indian Service, as in those of the Army, there is a noble spirit which makes men obey distinct orders, promptly, nay cheerfully, even in cases when the orders may have been contrary to their own judgment. But in this case,

I believe there is not a man in India whose judgment does not go with us, and who does not feel that, in largely reducing the Native Army, we are following the path, not only of Financial reform, but of Political prudence.

With this conviction the eye of Government will be on every Officer who has anything to do with the realization of these, our first properly framed and duly considered Budget Estimates, and he will find us prompt to recognize merit, not prompt to accept excuses or to admit of failure.

I have nothing more to add.

As I said at the commencement, I say now, there is no eloquence on such an occasion as this, but that of facts.

An oratorical triumph I do not seek. I am not an orator by nature, and if I were, I should disdain, in presence of such great interests, to resort to artifice, or to appeal to anything but reason.

But there are my facts. Take them, sift them, scrutinize them, for it is my conviction that they are solid and substantial facts and not shams.

It is not for me to anticipate the verdict of public opinion on the policy of the Government of which I am a Member; but this I will say, that I await it with confidence. I may be mistaken, but my belief is, that impartial men who understand Indian affairs, will, both here and in England, accept the results submitted to you to-day as, on the whole, not discreditable to Lord Canning's Government, and not discouraging as regards the prospects of this great Eastern Empire, which is,—or ought to be, and by the blessing of God *shall* be,—the brightest jewel in the Crown of our beloved Sovereign Lady Queen Victoria.

REPEAL OF REGULATIONS AND ACTS.

The Order of the Day being read for the adjourned recommittal of the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The Bill passed through Committee after several amendments in the Schedule, and, the Council having resumed its sitting, was reported.

Mr. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 20 being read by the Chairman—

Mr. SCONCE said, he wished to make the Motion of which he had given notice. The effect of the Section before the Council, as it now stood, was that, when a European British subject, charged with an offence, had to be committed to the Supreme Court for trial, only a Covenanted Civil Servant or a European British subject could make the commitment. Many classes of Magistrates would therefore by this alteration be rendered incompetent in the discharge of their duties as Magistrates. One very intelligent, highly competent class was the East Indian community, gentlemen who in every respect, but the accident of birthplace, might be fully described as European British subjects. Another class, almost of the same competency, were all the native servants of Government. However long such officers might have served Government, this Section placed a bar upon them by providing that no person who was an East Indian, or a Mahomedan, or a Hindoo, should be able to commit for trial a European offender. That was as to the absolute commitment. But the next Section sufficiently showed that the Council was sensible that, if that rule were carried out, great inconvenience would arise, and with the concurrence of

a Committee of the whole Council a Clause was inserted which provided that, when a charge was preferred against a European, an East Indian or Native Magistrate might arrest or hold him to bail, transmitting the proceedings to a Magistrate competent under the 20th Section to commit him for trial. So far, therefore, the Council was satisfied that they could not, in the public interest, wholly debar Native Magistrates by allowing them power and discretion to a certain extent. Now what would be the effect of the Section as to the present law? It would be at any rate largely to curtail the authority which all the Uncovenanted Magistrates were competent to exercise under the present law. Every Native Magistrate in Bengal, whether he was a Justice of the Peace or not, might at present arrest, enquire, take the answer of offenders, summon, and examine witnesses. Even if he were not a Justice of the Peace, he might make the case in every point complete, except that he must transmit the offender, being a European British subject, to a Magistrate at the Presidency who was a Justice of the Peace. A Native Magistrate might do all this; he might exercise the fullest discretion in proceeding against a European British subject, and if satisfied of his guilt, he might send him to a Justice of the Peace for the purpose of commitment to the Supreme Court. By this law, therefore, everything might be done, that was necessary to be done, except the bare commitment. But by the proposal now before the Council the power of holding preliminary enquiry was withdrawn. Therefore it seemed to him that it would be a retrograde step if the purpose of this Bill were, as this Section tended to show, absolutely to disqualify Native Magistrates from acting in the case of European British subjects. His idea of what the Section ought to be was that it should have universal application. Upon this principle the procedure should be formed. There ought to be no distinction between the Magistrates. He was not speaking now of the trial of European British subjects; that was not involved in the question now before the Council, but would come up by and bye when the question regarding the amalgamation of the Courts had to be considered. He was now speaking merely of the functions of a Magistrate in the course of proceedings preliminary to trial, and the universal rule ought to be to declare every Magistrate competent to exercise any duty which by law devolved on him. That principle amounted to this, that you avoided exclusion and disqualification. He would again refer the Council, as he had done two years ago, to the provisions of the 3 and 4 Wm. IV, c. 85, s. 87, by which it was provided that,

> "no native of the said territories, nor any natural born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, color, or any of them, be disabled from holding any place, office, or employment under the said Company."

Such was the universal principle which, in 1833, the British Parliament adopted. Neither religion nor place of birth should render any man incompetent to be a Magistrate. There was nothing in the shape of a sectional or national distinction that should be allowed to operate as a bar to public employment. Whatever test or standard of employment the law saw fit to prescribe or reserve was, as he read the 3 and 4 William IV., a standard of personal qualification, which might be moral or educational. If you admitted that, the matter seemed to him to reduce itself to this, that you must vest Government with the power of choosing these men, and Section 19 fully met the case by providing that the local Governments might empower any subordinate Magistrate to prepare cases and commit offenders for trial before a Court of Sessions or Supreme Court. He supposed that the capacity to exercise such functions might be found as well in Native Magistrates as in European. He supposed that the Government should be trusted to do what the law could not do. The law might arbi-

trarily and absolutely exclude certain classes of Her Majesty's subjects, whereas the Government might select its officers according to their capacity and qualification, and he thought this principle might be thoroughly accepted by the Council.

He would ask the Council to observe that the same principle was enforced in the 2 and 3 William IV., c. 117, whereby provision was made for the appointment of Native Justices of the Peace for the Presidency Towns. Now, what were the words of that Act? The Act was in the first place not confined to the persons to be appointed to the Presidency Towns. The Act was extended to all persons within the British Territories in India. Any person resident in the Territories of India might be appointed a Justice of the Peace for a Presidency Town. Ordinarily it might be supposed that, when you wished to make a Justice of the Peace for a Presidency Town, you would choose a resident. But in that case it was any resident, without distinction as to place of birth or religion, and what he wished more particularly to notice was this. The words of the Act of Parliament were "Whoever should appear to the Government to be properly qualified." So that the Act of Parliament, as far back as the 2nd and 3rd year of the reign of William IV., gave the Government the power to look only to the personal qualifications of their Magistrates, whether they were natives or Europeans, and the same rule should, he thought, be followed now. With these remarks he begged to move that Section 20 be omitted.

THE CHAIRMAN said, he was not sure that the Honorable Member who had just sat down understood the meaning of Sections 20 and 21 in the same sense as he (the Chairman) did. It might be that he was wrong in his interpretation of those Sections. But it appeared to him that, according to the definition given in the Bill of the word "Magistrate," that word included all persons who exercised any of the powers of a Magistrate. As, therefore, in speaking of commitment, the word "Magistrate" was used, any persons exercising the powers of a Magistrate might commit European British subjects for trial but for the Section which enacted that only a Covenanted servant of Government or a European British subject should have the power to commit European British subjects for trial. As the law now stood, the only person competent to commit a European British subject was a Justice of the Peace. A Native Magistrate might hold a preliminary investigation, might hear a complaint, and arrest a European British subject charged with an offence triable before a Supreme Court. He could not, however, send him down to the Supreme Court for trial, but must send him to a Justice of the Peace for commitment. It would be very injurious to a European to be sent down from Peshawur or any other distant place in charge of the Native Police, under a burning sun and with no conveniences for travelling, for the purpose of being tried before a Supreme Court. He might be sent down upon a false or groundless charge, and then, after he had been acquitted in the Supreme Court, he would have to find his own way back to the place from which he was sent down. The very travelling and having to find his way back again would be a great injury to him. Now, let us see who could be appointed Justices of the Peace. Under the 33 Geo. III., c. 52, s. 151, the power was given to the Supreme Court of appointing Justices of the Peace, who must be either Covenanted servants of the East India Company or British Inhabitants, the words "British Inhabitants" in Acts of those days meaning European British subjects and not natives. Therefore, as the law now stood, he apprehended that no man could be appointed a Justice of the Peace, unless he were a Covenanted servant of the Government or a European British subject. Similar laws were enacted for the appointment of Justices of the Peace at Madras and Bombay. Then the law was passed to which the Honorable Member for Bengal had

alluded—the 2 and 3 William IV., c. 117, by Section I of which it was enacted—

"It shall and may be lawful for the Governor-General in Council of Fort William in Bengal, the Governor in Council of Fort Saint George, and the Governor in Council of Bombay, respectively for the time being, to nominate and appoint, in the name of the King's Majesty, his heirs and successors, any persons resident within the Territories aforesaid, and not being the subjects of any Foreign State, whom the said Governor-General in Council and the Governors in Council respectively shall think properly qualified, and who will bind themselves by such oaths or solemn affirmations as may from time to time be prescribed in that behalf by the said Governor-General in Council and Governors in Council respectively, to act within and for the Towns of Calcutta, Madras, and Bombay respectively as Justices of the Peace."

Now, he recollected that in Bombay, by some mistake, Natives had been appointed Justices of the Peace not only in the Presidency Town, but out of it. In Bengal, Native Justices of the Peace had been appointed only in Calcutta. The Act expressly limited the appointment of Native Justices of the Peace to the Presidency Towns. In consequence of what took place at Bombay, a letter which he could not find at present, but which the Honorable Member for Bombay would probably remember, was sent by the Court of Directors in which it was pointed out that the 2 and 3 William IV. was expressly limited to the Presidency Towns, and that it was never intended to appoint Native Justices of the Peace out of the Presidency Towns. There was a great difference between the appointment of Native Justices of the Peace within Presidency Towns and their appointment in the Mofussil. In the Presidency Towns there was not so much danger as in the Mofussil, for if a Native Justice of the Peace committed a European to the Supreme Court in Calcutta for trial, the European would be imprisoned in the Great Jail, where he would probably remain a month or so, at the expiration of which time he would either be acquitted or convicted. But that Act did not give a Native Justice of the Peace power to compel a European to travel from one distant Station to another, and to be kept in a Jail, probably wholly unfit for the reception of Europeans, and to be carried down in the custody of the Native Police, merely because he had been committed for trial. There was not, therefore, that danger to be apprehended from the appointment of Native Justices of the Peace in the Presidency Towns, which there was from their appointment in places at a great distance from the Metropolis. Consequently the Statute 2 and 3 William IV., c. 117, was not applicable to the question under discussion; and according to the present law, no European British subject could be committed in the Mofussil for trial before a Supreme Court, except by a Justice of the Peace who must be a Covenanted Civil servant or a European British subject. Now let us see whether the present Bill altered that law. Section 20 prevented a Native Magistrate from committing European British subjects to the Supreme Court. Section 21 went on to provide as follows:—

"When a European British subject is charged with an offence triable by a Supreme Court of Judicature, any Magistrate may hear the complaint against such person, and may issue a warrant of arrest or hold to bail such person with a view to the complaint being investigated by a Magistrate authorized to hold the preliminary enquiry, and to commit or hold to bail such person for trial before such Supreme Court."

Then there came a provision as to the Procedure to be followed when a European British subject was arrested by an officer not being a Covenanted Civil servant or a European British subject; Section 22 providing as follows:—

"When a European British subject has been arrested under a warrant, issued under the last preceding Section, by a Magistrate, not being a Covenanted servant or a European British subject, such Magistrate, if he considers that there is sufficient ground for proceeding, shall forthwith forward the person arrested to a Magistrate authorized to hold the preliminary enquiry and to commit or hold to bail such person for trial before the Supreme Court, or if the offence with which such person is charged is bailable shall, if sufficient bail be tendered, admit him to bail for his appearance before such Magistrate."

So that it appeared to him that the provisions of this Bill were substantially the same as those of the law which now existed. The Bill empowered a Native Magistrate to hear complaints against and to arrest European British subjects, and to forward them to a Justice of the Peace for the purpose of commitment; but he was not to commit on his own authority. That was all that was required by the existing law and fully met the requirements of the case. A Native Magistrate very often did not understand the language of the European British subject, or the law administered in the Court in which the trial was to take place, and if he was to be sent down, possibly upon a charge on which he might eventually be acquitted, the greatest injury might be inflicted.

Therefore he thought that this Bill provided for what the law now required. All that it did away with was the necessity of issuing Commissions of the Peace. It did not matter whether a Magistrate was appointed a Justice of the Peace by the Supreme Court or not, if he had the necessary qualifications for the office, or in other words, if he was a Covenanted officer or a European British subject. If he were so qualified, the Governor-General in Council might cause him to be put into a Commission of the Peace, and probably every Covenanted Civil servant or European British subject, exercising the full powers of a Magistrate, would be appointed a Justice of the Peace. But it was said that this was a violation of the Charter Act 3 and 4 William IV., c. 85, s. 87. Now let us see the object of that Section. The Section provided as follows:—

"No native of the said Territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, color, or any of them, be disabled from holding any place, office, or employment under the said Company."

That Section did not qualify every Native to hold every office. The mere effect of it was that he was not disqualified to hold any office by reason of his religion, color, or race. Was he qualified to be a Judge of the Supreme Court? Certainly not, because it was required that a Judge must be a barrister of seven years' standing. A Native was not disqualified to be a Judge of the Supreme Court, by reason of his place of birth, but he would not be qualified to hold that office, unless he were a barrister of seven years' standing. Then, as regards the office of Sudder Judge, a Native could not be appointed to that office, because by the 53 Geo. III., it was specially provided that that office should be held only by a Covenanted Civil servant. It was ruled not long ago in England that the Registrar of the Sudder Court must be a Covenanted Civil servant. Therefore a native, as such, was not qualified to be either a Judge of the Supreme Court, a Judge of the Sudder Court, or a Registrar of the Sudder Court. The object of the Section of the Charter Act referred to by the Honorable Member for Bengal was not to qualify Natives to hold every office, but to prevent their place of birth or color from disqualifying them. In like manner, a European British subject was not disqualified to hold any office, but he was not as such qualified to hold every office. Place of birth or religion was not to disqualify a man, but he must possess the necessary qualification before he could be appointed to certain offices.

The present Bill was not intended to alter the existing law. If the Section before the Council did make any such alteration, he had no hesitation in saying that it went further than was intended. What was intended when this Bill was last settled by the Council was that Native Magistrates should be able to forward to Justices of the Peace European British subjects for committal to the Supreme Court. For these reasons it appeared to him that this Section would leave the law exactly as it now stood; and unless it were shown that it did alter the existing law, he should vote in support of the Section.

Mr. ERSKINE said, that in the first place, it might be well that he

should offer a few words of explanation as to a remark that fell from the Honorable and learned Vice-President relative to the supposed appointment some time ago of natives of this country to be Justices of the Peace in the Mofussil in Bombay. It was quite true that some native gentlemen, then residents in the Mofussil, had been appointed to the Commission of the Peace. But the Bombay Government had explained that the appointments then made were for the Island of Bombay only, and not for its dependencies, and that there had therefore been no infraction of the law. He (Mr. Erskine) must also, before going farther, admit that the statement just made by the Honorable and learned Vice-President on another point, removed some of the objections, which he (Mr. Erskine) had felt to the Section they were discussing as it then stood. It would produce less inconvenience if it were known that it allowed any competent Magistrate to act, if necessary, up to the point of commitment; and to restrict merely the power of making commitments. But in that case probably it would be advisable, should the Section be retained, to omit the words relating to preliminary enquiries which might be liable to misconstruction. The Honorable and learned Vice-President, as he (Mr. Erskine) now understood him, desired the retention of this Section on the ground that it merely declared and re-enacted the existing law. But surely it was hardly possible to accept, as a mere declaration of law, a Section which would transfer the principal duties hitherto performed by Justices of the Peace to a section of the ordinary Magistracy, as such, and which would at the same time transfer from Parliament to that Council the responsibility of maintaining in force what, with due deference, he must call a rigid rule of disqualification for the performance of those duties. But without insisting on that point at present, he would rather ask whether the laws thus referred to were the work of yesterday? Had there been no change in the state of this country since they were enacted? Had there been no increase in the number of persons in the Mofussil competent to act in the Commission of the Peace? Clearly the restrictions against employment in public duties were evils in themselves, and he knew of no reason for supposing that the Acts of Parliament which imposed them were less open than other Acts to alteration as the circumstances of the community were altered. Indeed, the laws on this subject had already, from time to time, been brought under revision by Parliament, and had, from time to time, been amended—and all those amendments, in as far as he (Mr. Erskine) was aware, had been in the direction of relaxation. Why, then, should they doubt that if these laws were now again to be reconsidered by Parliament and again to be amended, the amendments would still be in the same direction? For, after all, what would the proposed concession amount to? Even if this Section were to be struck out of the Code, that would make no change whatever in the law as to the trial of British subjects. It would not give any powers even of committing such persons for trial to any new class of persons or to any subordinate grade of Magistrates indiscriminately. But it would remove disabilities. It would enable every Magistrate, exercising the full powers of a Magistrate, to make commitments to the Supreme Court; and it would enable every local Government to select a sufficient number of other competent persons for similar duties from among the most experienced and the most respectable persons within its reach. And why should the Council hesitate to make so slight a concession as this? or why should they be pressed to declare and to enact that all but a privileged few were to be disabled by law, on other grounds than mere personal incompetency, from being selected even to perform the Magisterial duties above referred to? or to declare that the local Governments were not to be trusted with a discretion to select on their own responsibility, and on grounds of personal fitness, a sufficient number of persons to discharge those duties? He (Mr.

Erskine) need not offer opinions as to the probable effects elsewhere of the grant of some discretion of that kind. But he felt convinced that, in the Presidency with which he was connected, a reasonable authority for the selection of its own Magisterial Agency of all kinds might, with great safety and with great advantage, be confided to the local Government. That Government was already empowered by law to confer on any person the full powers of a Magistrate. Those powers carried with them authority to try and to punish even British subjects for certain assaults and contempts and other offences. And why should persons who might be trusted with these powers of trial and final judgment in one class of cases relating to British subjects, not be trusted with the mere power of commitment for trial in others? Why should the Government, which was trusted to select for the one class of powers, not be trusted to select for the other class also? For it must be remembered that a native of this country, even if he were not exercising the full powers of a Magistrate, might nevertheless have served for years as Judge of a Small Cause Court even in a Presidency Town, or as a Police Magistrate in a Presidency Town. He might have acted for years as a Justice of the Peace at the Presidency. He might have held other important offices, and even judicial offices, under the Government. He might have been educated in England. He might be resident, as a man of high character and high status, in a part of the country in which no Covenanted Servant or European British subject either resided or was likely to reside. Yet, even if this were so, even if the Government had confidence in the character of such a person, and had already received from him approved and faithful service, it would be debarred, if this Section should pass, from availing itself of his aid and his influence in the position analogous to that of a Justice of the Peace. Again, there was in this country, as his Honorable friend the Member for Bengal had reminded them, a large and growing community of Christian men, who nevertheless could not in strictness be designated European British subjects. Some Members of that community might have highly distinguished themselves in the public service, and shown much force of character in times of public peril—and this was not an imaginary case; they might have proved that they possessed courage and temper and loyalty, and yet, if this Section were to become law, the Government which these men served, and which honored them, would be unable to authorize any one of them, whatever might be his position at the time, even to prepare and commit for trial a simple case of theft (for instance) by a British subject in the Mofussil, and this not from any apprehension of a want of vigor or of impartiality on his part, but simply because he might not be able to show that he was serving Government under a covenant, or that he was legally and technically entitled to be called a European British subject. Indeed, a gentleman might be the most influential landholder in Bengal, but a Frenchman or a German. He might have his cotton screws or his cotton factories, and be one of the largest employers of labor in the Southern Maratha country, but a Native of New-York. And, if so, whatever his influence and intelligence and stake in the country and the requirements of his neighborhood, the Government would be prevented by this Section from availing itself of his services as a Magistrate or Honorary Magistrate in committing for trial a class of cases in connection with which those services might be especially valuable, and in connection with which also there might from year to year be more and more occasion for them. Surely such rigid, such sweeping legal disabilities as these must be as impolitic in this country as they had been proved to be in every other. And surely it was hardly consistent—he would not use a stronger expression—to withhold the most ordinary and reasonable powers of selection on grounds of personal fitness for the discharge of the duties now referred to, from persons to whose hands

was confided the entire administration of the Government of a great Presidency. He (Mr. Erskine) would not pursue the subject farther. But there were two points to which perhaps sufficient prominence had hardly been given in the remarks of the Honorable and learned Vice-President, and to which, therefore, he would urgently request the attention of the Council. The one was the very marked distinction which undoubtedly did exist between the grant of power to try and to pass final judgment in any class of cases, and the grant of power merely to commit those cases for trial elsewhere. The other was the marked distinction which also did exist between the grant of powers of any kind to whole classes of men or of Magistrates indiscriminately, and the grant merely of authority to a Government to select, on their own responsibility, and on the score of special qualification, individual officers to exercise those powers. The proposal of his Honorable friend the Member for Bengal went no farther than this, that the local Government should have authority specially to empower a sufficient number of the best men within their reach, to exercise the preliminary powers of commitment hitherto exercised by Justices of the Peace, and to this extent the proposal certainly had his (Mr. Erskine's) best support, and would, he hoped, have the support of other Honorable Members also.

MR. HARINGTON said, it was not his purpose upon the present occasion to enter into the very large question, as to whether European British subjects should or should not be tried, equally with natives, by native Magistrates, because he did not think the question fairly or properly arose upon the Section which they were now discussing, though with reference to remarks which had fallen from Honorable Members opposite (Messrs. Sconce and Erskine), he must observe that the question was not one of individual or personal qualification; it was a question of policy; it was a question of old and much valued privilege, and he must express a hope that the European British subjects in this country would not be deprived of any privilege which they now enjoyed in Criminal matters until an equivalent was provided which should satisfy all reasonable men. When this Section was last under the consideration of a Committee of the whole Council, he understood it to have been definitively determined, that so long as the Courts in the Mofussil were not authorized by law to try European British subjects except for the most trivial offences, in other words, so long as serious offences, when committed by European British subjects, continued, as at present, triable by the Supreme Courts of Judicature alone, the preliminary enquiry into such offences, when so committed, including the commitment to the Supreme Court, should be confined to the Covenanted Servants of Government, who had hitherto always been European British subjects, or European British subjects specially empowered for the purpose, provision being at the same time made which would allow any officer of Government in the Criminal Department, whether European or native, to apprehend any European British subject charged with the commission of a serious offence, and to carry him before a Court or Officer authorized to make the preliminary enquiry, and to commit to a Supreme Court. The object of this provision, which, if he recollected aright, was introduced on his Motion, was to prevent a European British subject who had committed a serious offence from escaping, because there was no Officer on the spot competent to apprehend him. He pointed out that if this were allowed, it would be a great evil, and would cast a serious reflection upon the administration of justice in the interior of the country. He believed he was right in saying that the Section which they had been asked to strike out, conferred no new privileges on European British subjects, or any privilege which they had not always enjoyed in practice, and here he must remark that he thought the Honorable Member for Bengal was wrong in supposing that, in the Bengal Presi-

dency at least, the Native Magistrates were authorized under the law as it now stood to entertain charges of serious offences against European subjects, and to enquire into the same with a view to commitment to the Supreme Court. Regulation XV of 1806 of the Bengal Code seemed carefully to guard the European British subject, and to render him amenable to the City or Zillah Magistrate alone, and under the Act of Parliament quoted by the Honorable and learned Vice-President, only Covenanted Officers could hold the appointment of City or Zillah Magistrate. If the City or Zillah Magistrate was a Justice of the Peace, he made the commitment to the Supreme Court direct, but if he was not a Justice of the Peace, he was required to send the accused to a Justice of the Peace. He did not find these powers given by any law to the Native Magistrates. Looking, then, at the Section now before them as only maintaining the existing law and practice, and seeing nothing in the present Code which would compensate European British subjects for the loss of the privilege of which they would be deprived, if the Motion of the Honorable Member for Bengal for the omission of the Section were adopted, he should vote against the Motion.

Mr. SCONCE said, he wished to explain, with reference to the Regulation of 1806 to which the Honorable Member for the North-Western Provinces had alluded, that, when that Regulation was passed, it was declared that a Zillah or City Magistrate should do so and so. But when we came much later, by a subsequent law, to appoint Deputy Magistrates and to confer on them all the powers of a Magistrate, they became essentially competent to exercise the same powers as were vested in a Zillah or City Magistrate, by the older Regulations, emanating from the same local legislature.

Sir BARTLE FRERE said, the Honorable Member for Bengal, whose approaching departure from among them they all must lament, could not have chosen a more important subject with which to signalize his last day in that Council.

The subject was one which had caused much excitement and irritation. But, if calmly and dispassionately considered, some at least of the irritation might be mitigated by a full and frank statement of the views each Member held, and a fair discussion of the reasons on which they rested.

He would but very briefly advert to the past history of legislation on this subject, but would beg attention to the fact that from the earliest times the much abused Courts of Directors took measures to plant English Courts, as complete copies as they could devise of the Courts in Westminster Hall, in each of the principal seats of their trade and power. At first in the small Settlements they were Mayors' Courts, or Recorders' Courts, such as would have suited a small trading community in England. But gradually developing themselves with the increasing wealth and importance of the Presidency Towns, they finally became the Supreme Courts, as we now found them, with some considerable variation in their chartered jurisdiction and practice, but all closely modelled on the English pattern, and all having the same aim of securing those essentials which Englishmen deemed necessary characteristics of a perfect Court of Justice. A Bench chosen from the most eminent practical lawyers, placed in rank and social position so high as to secure from the unthinking multitude that respect which the virtues and learning of the Judges would command from the more reflective classes, aided by advocates belonging to that Bar which was one of the glories of England and the chief nursery of her Statesmen, and administering the law as it had been handed down to us by English ancestors, and as it was from time to time amended by the wisdom of Parliament, and all this machinery acting under all the safeguards and checks which open Courts, oral proceedings, and perfect publicity could furnish to secure a pure and impartial administration of justice.

But it was to be especially observed that none of the Charters of these

Courts made any distinction of race or origin, save as a guide to jurisdiction. The Courts were at first established in factories, and had, therefore, jurisdiction over none save British subjects and factory servants, but the Charters provided that justice was to be administered to all alike without distinction, favor, or affection. The only limitations were territorial limitations of jurisdiction, and the practice of these Courts had been in conformity with these principles. Any idea of having one criminal law for one race, and another law for another race, would have been scouted.

Hence the respect and affection with which the Supreme Courts were, and always had been, regarded by all classes. Hence the justice of their boast that they had ever been looked on by Natives as well as Europeans as the great bulwark of their liberties and rights of property and person.

It would have been well if this system had been extended as our empire rapidly increased. There was of course much in the paraphernalia of our Supreme Courts which was suited only to large metropolitan cities, but there was nothing to have prevented the multiplication of Courts possessing the same essential claims to confidence, and it was to be lamented that we did not go on as we had begun, and multiply such Courts, Recorder's Courts or Supreme Courts, as each fresh centre of commerce came into our hands, or felt the want of such tribunals. The obligation to do so was never denied, and the provision of Courts of Justice superior to those then in use in the Mofussil, and, in all essentials possessing equal claims to public confidence with the Supreme Courts, was recognized as a national duty by the framers of the Charter Act of 1833, and it was partly owing to the expectation then held out of a general reform of all Courts that the multiplication of Courts on the model of those in the Presidency Towns was deferred.

It was not necessary to dwell on the labors of the Commission of which Lord Macaulay was the first Member, nor on the circumstances which delayed the execution of the noble project which he was sent out to carry into practical effect. The reform of laws was a vast and ever growing task, and our empire would not stand still. It went on increasing with such marvellous rapidity, that no legislation could keep pace with it, and the consequence was that vast Provinces were to this day governed by Codes of law improvised by their conquerors, and rapidly adapted to their varying wants from the portions of older legislation which happened to be most suited to them.

But the work of law reform had never stood still, and the Council had lately passed a Code of Criminal law which came up to the high standard laid down by the most ardent of the great law reformers who first conceived the idea of a great uniform Code for all India.

The Code now before us was the Companion Code of Criminal Procedure, and was by far the more important of the two, inasmuch as a bad law well administered was more tolerable than a good law ill administered. The portion now under discussion related to the all important question of jurisdiction.

The Honorable and learned Vice-President had taken much pains to prove that the Clause which it was proposed to omit was simply declaratory of the law as it now stood. If this were the case, he (Sir Bartle Frere) would have no objection whatever to them, but the fact was, they did restrict the present law in what appeared to him a most objectionable manner. As the law now stood, no one, who was not a Justice of the Peace, could commit any European British subject for trial before the Supreme Court. The Clause of the Bill now under consideration took away this power from Justices of the Peace, and confined it to "Covenanted Servants of Government and European British subjects," who must, under Section 19, be especially empowered by Government to act in this behalf.

Now, did the words "Covenanted Servants of Government and European British subjects, so empowered," mean

the same as "Justices of the Peace?" Certainly not. The Honorable and learned Vice-President had justly pointed out that no one who was not a Covenanted Servant of Government or a "British inhabitant" could act as a Justice of the Peace beyond the limits of the Presidency towns. This was quite true, but then the Honorable and learned Vice-President had argued as though "British inhabitant" and "European British subject" meant the same thing. But he (Sir Bartle Frere) need hardly say they did not. European British subjects formed but a very small portion of the class which came legally under the definition of "British inhabitant." Indeed it was very difficult to say what constituted either a "European British subject" or a "British inhabitant," though it might be possible to say what did not. However, there were large classes of the community, he need only specify the highly respected class of Eurasians, who were clearly among the British inhabitants, but many of whom could certainly not establish their claim as European British subjects. Many of these, in Bombay at all events, were Justices of the Peace, and among the most respected of that body, but all would be disfranchised by this Bill.

Now, it was instructive to trace how these Clauses had got into the present Bill.

There were no class or blood exemptions from jurisdiction in the original Code, as it was first introduced into that Council. Section 8 Chapter II of the Criminal Procedure Bill for Bombay, prepared and brought in by the Honorable and learned Vice-President, and read a first time on the 24th January 1857, provided as follows :—

"No person whatever shall by reason of place of birth or by reason of descent be in any criminal proceeding whatever exempt from the jurisdiction of any of the Criminal Courts."

Section 19 went on to provide—

"It shall be competent to the Government to direct that any subordinate Criminal Court shall be authorized to hold the preliminary enquiry into cases triable by the Sessions Courts, and to commit or hold to bail, parties to take their trial before such Court and to exercise all the powers necessary for such purposes."

This and the cognate Codes for Bengal and Madras were subsequently consolidated into the Criminal Procedure Bill for simplifying the Procedure of Courts of Criminal Judicature not established by Royal Charter, as presented by the Select Committees on the several Bills relating to Bengal, Madras, Bombay, and the North-Western Provinces, with their joint Report on the 30th April 1859.

Sections 1 and 2 of Chapter I, provided as follows :—

"1. The Criminal Courts of the several grades, according to the powers vested in them respectively by any law for the time being in force, shall take cognizance of all offences punishable under the Penal Code or under any special law, except offences which are by any such law made punishable by some other authority therein specially mentioned.

"2. The Criminal Courts shall have jurisdiction over all persons in respect of such offences, except such persons as by any Act of Parliament or by any Regulation of the Codes of Bengal, Madras, and Bombay respectively, or by any Act of the Governor-General of India in Council are or shall be expressly exempted from such jurisdiction."

Chapter II., Section 19, of the original Bill, had become Section 20, empowering

"any subordinate Criminal Court to hold the preliminary enquiry into cases triable by the Court of Session."

To this, at some subsequent period which he could not trace, were added the words "or by any of the Supreme Courts of Judicature," which by involving the committal of Europeans for trial by the Supreme Court, raised the present question. There were then added in Committee of whole Council, Sections 21, 22, and 23 which now respectively stood as Sections 20, 21, and 22 of the present Bill.

Now he (Sir Bartle Frere) entirely concurred with the principle of the original Bill, and considered that if our Courts were what they ought to be and what we were bound to make them,

"no person whatever should by reason of his place of birth or by reason of his descent, be in any criminal proceeding whatever exempt from the jurisdiction of any of the Supreme Courts;"

and he hoped yet to see the principle carried out.

But this was a less extensive Bill in scope. It did not apply to Supreme Courts, before which alone Europeans could now be tried. He could well understand men wishing to keep up the position and privileges of the Supreme Court, and he would not wish to subject any one to Mofussil jurisdiction who was now exempt from it, till the Courts of the Mofussil had been so reformed as to possess all the substantial safeguards for the proper administration of Justice which the Supreme Court now possessed. Great progress had been made and was still making in this respect by the provision of systematic and uniform laws, the greater care applied to the selection and education of Judicial Officers, and the increased and more vigilant supervision exercised over them by both the Government and public. He felt assured that the time was not far distant when we should be able to act fully up to the principles originally laid down in this Code without feeling that we had deprived any class of Her Majesty's subjects of any real safeguard for the administration of justice which they now possessed. But you could not, in these matters, legislate with benefit much in advance of public feeling and opinion, and for this, if for no other reason, he would be content in a Bill of this kind, which did not take into its scope all the Courts in the country, and which was avowedly not a final and universal measure, to await yet longer for the embodiment of those great principles of universal equity which would, we might trust, characterize all our general and permanent legislation.

But while we might be content to stand still, we should be careful not to go back. These provisions in Sections 20 to 22 were retrogressive with reference to the present practice which reserved to the Supreme Courts and Justices of the Peace and Magistrates the ordinary jurisdiction over European British subjects. Sections 20 to 23, however, restricted the jurisdiction to Covenanted Servants and European British subjects, and extended the exemption to all Europeans and Americans. This restriction virtually disfranchised large classes of Justices of the Peace in Bombay and possibly also in Madras. There was a great difference between the law at Bombay and in Bengal. The 33 Geo. 3rd c. 52 s. 151, empowered the Governor-General and Governors of Madras and Bombay to appoint Justices of the Peace for the Presidency, and in the case of Bengal for the Provinces of Bengal, Behar, and Orissa, but in the case of Madras and Bombay only for the Presidency towns and "the places thereunto subordinate" including all dependencies, so that a Bombay Justice of the Peace, if he were a Covenanted Servant, or British Inhabitant, could act as Justice of the Peace in any Province subordinate to Bombay. In practice, there were large classes of non-official European and Uncovenanted Officers acting in Bombay as Justices of the Peace. Among the latter he would mention but one, Mr. Charles Forgett, the Chief of Police, a man universally respected, and to whom, more than to any one man, Bombay owed the quiet it enjoyed during the eventful months of 1857.

He found that last year there were no less than 442 Justices on the Bombay Commission. Of these 160 were resident in Bombay, including 55 native Justices qualified to act for the Town and Island only. But among the European Justices he found, besides Covenanted Servants and Military men, 2 Solicitors, 4 Barristers, 28 European Merchants, 2 Railway Officials, 26 Uncovenanted Civil Servants, 11 Medical Officers, the Municipal Commissioners, the Police Magistrates, Naval Officers, the Principal of a College, a Judge of the Small Cause Court, the Official Assignee, the Agent to the P. and O. Company, and the Secretary to the Bank of Bombay; and in the list of native Justices, he found some who would be here classed in the Eurasian community. Now all these would be dis-

Sir Bartle Frere

franchised by the present Bill. It would do away with one main duty of Justices of the Peace, and there could be no doubt that the office would speedily fall into disuse. Now, in Bombay at all events, this would be a serious evil not only as regards their judicial duties, but in Municipal matters. The Justices in Bombay had the entire direction of all Municipal affairs, and he appealed to his Honorable friends opposite (Sir Charles Jackson and Mr. Erskine), whether they were not managed at least as well as at the other Presidencies.

For this large and useful body of Justices representing every class and race in the country, the Bill proposed to substitute Covenanted Civil Servants and European British subjects selected and empowered by Government. He would ask, was not this a step backward, and was it not mischievously retrograde ?

And here he must notice what seemed to him a serious fallacy in the argument of the Honorable and learned Vice-President. He had argued as though the Honorable Member for Bengal had maintained that the circumstance of a man's being a native was any qualification for office. Of course, the Honorable Member meant no such thing. He simply meant that it ought to be no disqualification. It was, in fact, no disqualification for much higher Judicial Office. The Honorable and learned Vice-President had truly said, there was nothing to prevent any of the natives of India, who were now studying for the Bar, being called to the Bar, and, if he were fit for it, entering the Civil Service and becoming Chief Judge of the Sudder, or even Chief Justice of the Supreme Court. But this Bill said that a man who could do all this, if he was really fit for it, should not make the preliminary enquiry into the case of a man who was to be tried before the Supreme Court, should not commit him for trial, though he was not disqualified from sitting to try him as Chief Justice. This surely was hardly consistent.

Again, the Honorable and learned Vice-President had pointed out that only those Justices of the Peace, who were Covenanted Servants or "British inhabitants," could act as Justices of the Peace beyond the Presidency towns. This was quite true, but then the limitation was one of Commission, not of race or color or legitimacy, and as such, it had no sting. The distinction of Covenanted and Uncovenanted was one, the reason for which every day weakened and rendered it less tenable and more odious. So that of European British subjects, of two Christian inhabitants with equal claims to European descent, one was, the other was not, a "European British subject ;" both were equally good Christian "British inhabitants," and both were eligible to be Justices of the Peace, but only one came within the definition of this Clause as a European British subject. The qualification of Justices of the Peace was amply restrictive, and provided every safeguard for none but qualified men being admitted—much better security, in fact, than under the proposed Bill, inasmuch as there was much more publicity and more checks on the publication of a Commission by the Judges of the Supreme Court than in a simple appointment in the Gazette.

The Honorable and learned Vice-President contended that the alteration which it was proposed to make in the law was in the interest of the European who might be accused of any crime, and he supposed the case of a man sent down from Péshawur to the Presidency, and there found to be guiltless of any offence which deserved committal for trial. But he (Sir Bartle Frere) submitted that this was a very exaggerated picture. In the first place, it was not at Peshawur or in the Punjab, but much nearer the Presidency, that non-military Europeans were found in the greatest numbers, and it was quite as great an evil in the aggregate to drag many innocent men, each one or two days' journey, as must often happen if this Clause were passed, before they could find a Covenanted Servant or European British subject specially empowered to hear the case and to dismiss it, if no grounds for committal existed. The

plan he (Sir Bartle Frere) advocated would obviate this evil. Any Justice of the Peace could dismiss the case if the accused were innocent, and there would be Recorders' Courts or Courts on the model of the Supreme Court, nearer at hand than Calcutta, to try the case if committed for trial.

It had been said these arguments were un-English, that they were only used by men who forgot that they were Englishmen and what India owed to Englishmen, and that they were prompted by hostility to non-official Englishmen. He (Sir Bartle Frere) believed a careful consideration of the matter would show the groundlessness of all these assertions. No one who had passed through the years 1857 and 1858, was likely to forget what was due to Englishmen. No one who had seen, as some of us had seen, a mere handful of such men hold their ground against mutiny, and maintain our supremacy over millions of lately conquered and warlike tribes, was likely to undervalue the weight of an English arm, or the value to peace and order of a single English life.

He would appeal to those who had stood in such situations, how much less was their confidence in the mere physical force of our bayonets than in the justice of our cause. We felt that we had erringly and very imperfectly, but honestly, and to the best of our limited ability, carried out an English policy. We had not treated the natives as a conquered alien race, and we felt sure that by the blessing of God we might hope to prevail, and by His blessing we did prevail. But he felt convinced that the cause he now advocated was the cause of those who would wish to give to non-official Englishmen more weight and free scope for their energies in this country. What argument could you use for giving European property, intelligence, and local interest, their due influence in the country, which should not tell with increased force when the far larger property, the much greater interests, and the at least equal intelligence of the native was in the scale? How could you argue for the rights of property, intelligence, and local interest, when you could be met by the retort that you cared nothing for these things, unless the owners were of the same color and the same blood as yourself?

Moreover, it was not the natives only who suffered by such exclusions and distinctions, but the injustice recoiled on ourselves. The History of every great aad conquering nation more or less illustrated this truth.

We had heard much of Roman Policy. Well, what was that Policy? With the leave of the Council he would read a description of it from the latest and one of the most philosophical of our historians :—

"The Roman polity, however," (said Merivale) "presents another side which lays much greater claim to our interest. However selfish and exclusive the sentiments were which constituted its basis, necessity compelled it at sundry periods to admit aliens and even enemies into alliance and association with itself. The annals of the Roman people afford us the most perfect illustration of the natural laws which seem to control the rise and progress of nations. The almost uninterrupted succession of their triumphs, the enormous extent of the dominion they acquired, and the completeness of the cycle through which they passed from infancy to final decrepitude and decay, combine to present them to us as the normal type of a conquering race. One principle seems to be established by their history, namely, that it is the condition of permanent dominion, that the conquerors should absorb the conquered gradually into their own body by extending as circumstances arise, a share in their own exclusive privileges to the masses from whom they have torn their original independence. Thus only can they provide a constant supply of fresh blood to recruit their own exhausted energies, and strengthen the basis of their power while they extend the limits of their conquests.

All conquering nations feel an instinctive repugnance to making their sacrifice of pride and immediate interest; all struggle blindly against the necessity; those alone which in due season submit to it retain the permanence of their institutions and counteract the inherent principle of decay. The obstinacy with which the Dorian conquerors of Sparta resisted this necessity checked their career of aggrandizement, and brought their political existence to a premature termination. We are ourselves witnesses at the present day to the consequences of such resistance in the impending ruin of a more magnificent empire, the dominion of the Turks in Greece and Western Asia. On the other hand, the latest conquerors of our own Island and of Gaul have acknowledged the conditions thus attached to the triumph of

their arms, and the effects of their victory, itself long since forgotten, have endured through a succession of many centuries. It was by gradually communicating to their subjects, however reluctantly, the outward badges and privileges of the conquering caste, that the Normans and Franks averted the reaction which must otherwise, sooner or later, have swept away the progeny of a mere handful of adventurers before the accumulating numbers they had for a time coerced. But in relinquishing the privileges extorted by arms, they have retained the ascendancy naturally due to superior genius, and have each impressed their own character indelibly upon the institutions which all the inhabitants of the soil now regards equally as their own."

But there was another, a still more striking instance in the state of Spanish America. The position of the Spaniards was not unlike that of ourselves in India; they conquered a people individually inferior to themselves in physical force and in the art of war, and they attempted to carry out the policy which was sometimes recommended to us in India—to conquer and protect the people, to prescribe to them their religion and laws, but to exclude them carefully from all share in their own Government. This purpose was carried out with an ability and perseverance which elicited the admiration of historians like Prescott and Helps, who showed at the same time how all that ability was misdirected, and what had been its result. What remained now of the Spanish empire in America?

Look again at North America, and reflect on the consequences which had followed one false step in the fundamental laws of that great nation. It was not the colored population alone which had suffered; the dominant race had reaped in mental and moral degradation a punishment of fearful severity as compared even with the material losses which now threatened them. But we need not go so far. Throughout Europe what was the great question which had arisen and was now agitating all men's minds? It was not as to the comparative physical or moral qualities of this or that people, but how long a subject people who were able to take a share in the Civil administration of their own country should be systematically excluded from it, and be treated as a conquered race. If it was thought that our Mofussil Courts needed further reform before we could safely advance and adopt the only sound principle which could guide us in this matter, he (Sir Bartle Frere) would be well content to remain where we were till further reforms could be effected; but do not let us retrograde. By so doing, rely on it, we would not only miss the glory which might be ours of giving to India a perfect Code for all future time, but we should alienate from ourselves the sympathy of our fellow-countrymen, by adopting a course opposed to that policy which had characterized our nation in every part of the world, had laid the sure foundation of all that was successful in our Colonial policy, and had been hitherto the mainspring of all that was permanently successful in India.

SIR CHARLES JACKSON said, he looked upon this Motion as an attempt to get in the thin end of the wedge, and to disturb that principal on which this part of the Bill was based when last settled in Committee. It was then determined not to create a new exemption, but to leave European British subjects in their present position. The Honorable Member for Bombay had endeavored to draw a distinction, and in so doing he had been followed by the Honorable Member of Government opposite (Sir Bartle Frere); and they contended that this was not an attempt to place Europeans under the Mofussil Courts generally, but only to give the Native Magistrates the qualified jurisdiction of committing European British subjects for trial before a Supreme Court. But all the reasoning of the Honorable gentlemen raised the whole question, whether British subjects should be placed under the jurisdiction of the Mofussil Courts. He (Sir Charles Jackson) declined to argue this motion on the narrow question raised by this Section. If Honorable Members raised the question at all, they must expect it to be treated as a whole, and not argued piecemeal on what might be one of the weak points of the question. Now he was free to confess that the question of

subjecting European British subjects to the jurisdiction of the Mofussil Courts was not in the same position now as it was when in 1849 Mr. Bethune brought forward what were called the Black Acts. He (Sir Charles Jackson) was old enough a resident in India to recollect the violent opposition then offered to those Acts, and the Meetings which were held against them. He remembered that, on the one hand, it was contended by the supporters of the Black Acts, that they merely carried out the broad principle of the equality of all men before the law. On the other hand, it was argued that British subjects had their own Laws and Courts with which they were quite satisfied, and that, before their own laws were taken from them, the Mofussil Courts should be improved, and the Mahomedan law which prevailed in their Courts in Criminal cases should be abolished, and some better law introduced. They did not claim this exemption, as the Honorable Member of Government (Sir Bartle Frere) had said, on the ground that they were conquerors; and had no objection to natives being raised to the same level with themselves. But what they objected to was that they should be deprived of their own Laws and Courts, and reduced to a lower position by being placed under other Laws and Courts which were deemed by themselves and generally admitted to be of an inferior kind. That was the way in which the question was then raised and met. He admitted that the question was not in so strong a position now as it was then. The great man who then ruled India, Lord Dalhousie, at once saw the true state of the case, and directed Mr. Bethune to turn his attention to the Penal Code, and to perfect that before he proceeded farther with the Acts objected to. That was a wise resolve on the part of that Statesman, and the Penal Code having now been passed, it had certainly cut away one of the grounds on which the opposition to such measures was formerly rested. But the other ground still remained, namely, that British subjects as a class had a right to object to being deprived of their own Courts to which they were more or less attached, and placed under other Courts for which they had not the same respect. Before you did away with these exemptions, you must constitute better Mofussil Courts. This had nothing to do with what the Honorable gentleman had said about being conquerors. The question was not whether natives were to be deprived of good Courts or in any way oppressed, for they had much better Courts under our Government than they ever had before; but whether British subjects should be deprived of their own Courts and placed under Courts with which they were not so well satisfied. The Government had only to create a Court with a lawyer at the head of it, at Agra, Lahore, Kurrachee, and other places; and then at once this objection would vanish so far as regards the trial of British subjects before such Courts. But still the objection would remain to the investigation of such cases by a Native Magistrate. Such Magistrates would be generally ignorant of the language of the British subject, and would have no proper jail in which to detain him.

Another point upon which a great deal of stress had been laid was that this Section would be in violation of the Charter Act 3 and 4 William IV. It had been treated as if this Bill were going to exclude natives from particular appointments. It did no such thing. It only said that native Magistrates should not perform certain functions. Surely the Charter Act did not prevent the Council from assigning certain duties to certain officers. That was done by them in many other cases, and the whole argument was therefore as fallacious on this ground as on the other ground so fully answered by the Honorable and learned Vice-President.

The Honorable Member of Government then said that the Code of Criminal Procedure, as it was introduced into the Council, contained no such Clause, and that he should be glad to stand by the Code as it originally stood. He (Sir Charles Jackson) begged to say

Sir Charles Jackson.

that in its original form that Code contained an exemption which would have been a disgrace to any Legislature, if allowed to stand. The Code of Criminal Procedure, as originally framed by the Commissioners in England, proposed to create a new exemption—to exempt certain classes, such as the whole of the Covenanted Civil Servants of Government and others, when charged with certain offences, from the jurisdiction of Criminal Courts to which all other classes were subject.

SIR BARTLE FRERE explained, that what he had said was, that he should be glad to stand by the Section now under discussion in the form in which it stood in the Code as introduced by the Honorable and learned Vice President in 1857. He did not allude to any other portions of the Code, nor to any previous edition of the Code drawn up by the English Law Commissioners.

SIR CHARLES JACKSON resumed. That was certainly some explanation, though it did not disturb his argument. He would take this opportunity to say that the Clause to which he had been referring, and which had been attributed in another place to the learned Members of this Council, was put into the Code by the able Commission by which it had been framed. When the Bill was read a second time, the Clause was opposed with great indignation by Sir Arthur Buller, who was supported by the then Chief Justice (Sir James Colvile) and the present Vice-President, then a Member of Government; and in consequence of that opposition, the Clause was immediately struck out as soon as it could be, when the Bill proposed by the Commissioners got into a Select Committee of this Council.

Then it was said that the Section now before the Council would disfranchise a great number of Native Justices of the Peace in Bombay. No Act of that Council could restrict the operation of the Act of Parliament referred to, and he, for one, had no objection to the appointment of Justices of the Peace in Presidency Towns. With a large European community and a vigilant Press to supervise and watch their proceedings, he should not object to it for a moment, because they were there under the control and check of public opinion. But that was not the case with regard to Native Magistrates at a great distance from the Presidency.

The Honorable Member (Sir Bartle Frere) had referred strongly to the events of the last three years. But he (Sir Charles Jackson) must say that the events of those years had not impressed his mind with the desirableness of giving the proposed power to Native Magistrates. Before this could be done, Government must provide good Courts and Jails. British subjects did not claim exemption as conquerors, but they insisted on good Courts; and as this exemption had already won for all classes a Penal Code, so in like manner he believed it would eventually extort for all the inhabitants of this country good and efficient Courts.

SIR ROBERT NAPIER said, the Honorable and learned Vice-President had clearly set forth the evils to which a European British subject was liable in being sent down to Calcutta for trial from a distant station. He had witnessed those evils himself. He had known the case of a European being sent down for trial from the Mofussil, who had returned after no less a period than a year, there not having been any evidence against him. He could not think it expedient to place the power of sending Europeans down for trial in the hands of Natives. He would not object to Natives of this or any other country, provided they had a Christian Code to guide them, or such an English education as would enable them thoroughly to understand the wants and nature of Englishmen. But we knew that, though an exceptional case might possibly exist here and there, as a rule Natives possessing those conditions were not to be found in the Mofussil. Unless, therefore, he were sure that no person should be made a Justice of the Peace who did not possess those conditions, he would not alter the Clause, but would propose that it stand as at present.

THE CHAIRMAN said, he would make only a very few observations with regard to what had fallen from the Honorable Member of Government on his right (Sir Bartle Frere). In alluding to the Justices of the Peace at Bombay, the Honorable Member had referred to gentlemen who were on the Commission of the Peace, and he had alluded to one gentleman in particular, who, he believed, was in every way qualified to be entrusted with all the powers of a Justice of the Peace in any part of the country. But because you found one gentleman who was so qualified, that was no reason why all should be included in the same category. This Bill applied exclusively to the Mofussil and did not affect the Presidency Towns. The Code originally prepared by Her Majesty's Commissioners in England, did apply to the Presidency Towns as well as to the Mofussil. But then it was proposed that there should be a High Court of Judicature, and the Code was prepared with reference to that plan. It was afterwards determined that the question as regarded the establishment of a High Court should remain in abeyance. This Council had no power to abolish the Supreme Courts without the sanction of the Home Government, and had received no authority to that effect. With the exception of that part of the Code, therefore, which related to the High Court, the Bill was read a first time, as it had been prepared by some of the highest authorities in England. They were Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Mr. Cameron, Mr. Macleod, Mr. Ellis, Mr. Lowe, and Mr. Hawkins. Those were the gentlemen who prepared this Code. Yet even they did not propose to render all classes alike amenable to all the Criminal Courts of the Country. They proposed to establish a High Court of Judicature, Courts of Sessions, Courts of the Magistrates, and subordinate Criminal Courts, and to give the Magistrates' Courts power to pass sentence to the extent of two years' imprisonment with hard labor. But they also proposed that the High Court and Sessions Courts exclusively should have jurisdiction over certain classes of offences. By Section 10, Clause 3 of the Code prepared by Her Majesty's Commissioners, it was declared that the High Court and Sessions Court exclusively should have jurisdiction in respect of "offences however punishable under any Clause of the Penal Code, charged against public servants of the first four classes described in Clause 14, whether as such public servants or otherwise." Now, the first four classes of public servants described in Clause 14 of the Penal Code as it then stood, were :—

"*First*, every Covenanted Servant of the East India Company ; *Second*, every Commissioned Officer, Military or Naval, in the service of the East India Company ; *Third*, every Commissioned Officer of the King's Army, while serving under the Government of India ; *Fourth*, every Judge."

These four classes, therefore, were, by the Code of Criminal Procedure, as framed by Her Majesty's Commissioners in England, proposed to be exempted from the jurisdiction of Courts of the Magistrates and the subordinate Criminal Courts in respect of any offence punishable by the Penal Code charged against them, whether as such public servants or otherwise. It had been asserted that, when the Code of Procedure was sent out from England, the Judges or the lawyers, he was not quite sure which, who had been bred up in the English law and who were Members of the Legislative Council, had actually proposed to exempt from the jurisdiction of the Courts of Justice to which all other men were to be subjected, one class and one only, namely, the Civil Servants of Government, and that so monstrous a proposal was not to be found in the annals of any despotism that ever existed. He had not the honor of being a Judge at that time, and he could not say whether he was intended to be included among the persons against whom the charge had been made or not, but he begged to state publicly that there was not the slightest foundation for the charge. No one in this Council

LIBRARY

had ever proposed to exempt the Civil Servants of Government as a class. The exemption of that class and three others was contained, as he had already explained, in the Code as it was prepared by Her Majesty's Commissioners in England. When the Code, as prepared in England, was read a first and second time, in order that it might be brought fully and fairly before the public, it was upon the express understanding that no Member was to be considered as pledged to any part of it. He remembered that, on the occasion of the second reading, both of the learned Judges who then held seats in this Council (Sir James Colvile and Sir Arthur Buller) repudiated in the strongest language the Clause in question, and he himself expressly stated his concurrence with them in the opinions which they then expressed, and the Clause was struck out in Select Committee before the Code ever came under the consideration of a Committee of the whole Council. The charge, therefore, against both the Judges and himself, if he was intended to be included in it, was a most unfounded statement made behind their backs, which most certainly could not have been made in their presence without contradiction.

Sir BARTLE FRERE asked, if the Honorable and learned Chairman was referring to what had fallen from him?

The CHAIRMAN said, he was alluding to what had been recently stated by a certain nobleman in the British Parliament. He did not think that a man of honor had a right to make a charge with a view to disparage another, especially in his absence, and when he could not defend himself, without previously ascertaining the true state of facts. He had alluded to this circumstance because his attention had been called to it by the present discussion.—But to revert to this Code. Although the Clause had been since struck out, yet the principle of exemption had been established by the Code as originally framed by Her Majesty's Commissioners in England. There was no doubt a difficulty in dealing with European British subjects. It was not intended to make them liable to final trial in the Mofussil Courts as they now existed. That principle was admitted by every Member of the Council now present. Therefore, there was to be some exception. What then became of the principle of equality on which the Honorable Member had laid so much stress? Under the Mutiny Acts for the European Troops, it was provided that offences of a criminal nature, and not strictly military offences, might be tried by General Courts Martial, if committed beyond 120 miles from the Presidency Towns. But it was expressly provided that the offenders were not to be exempted from the jurisdiction of the Criminal Courts. Now he would ask, suppose an Officer of the Queen's or Company's Army were charged before a Native Deputy-Magistrate with an offence; was he to be committed by him for trial before the Supreme Court, and marched down in the custody of the Native Police, to be tried before that Court, and to be imprisoned on his way in a jail not adapted to the confinement of Europeans? And this led him also to ask in what place European British subjects were to be imprisoned, if they were to be rendered amenable to the Criminal Courts of the country? So long as there was an exception with regard to trial, there ought to be an exception with regard to commitments for trial. There was a great difference between sending down Europeans from distant stations in the Mofussil to the Supreme Court for trial, and sending them to a Sessions Court. In the latter case they would have but a short distance to travel; but when it came to sending them down to the Supreme Court in the custody of the Native Police, upon a charge of which they might eventually be acquitted, it became a matter of vital importance. It was, therefore, necessary to make this exception until the administration of justice in this country was so reformed as to allow of European British subjects being tried by the Courts of Session. But so long as the necessity still existed of sending them

down from distant stations for the purpose of being tried before the Supreme Court, the power of commitment ought not to be placed in the hands of persons, unless they were Covenanted Civil Servants or European British subjects.

Then there was another matter to which the Honorable Member (Sir Bartle Frere) had referred, and in which he had been well met by the Honorable and learned Judge (Sir Charles Jackson). It was contended that this Section aimed at the exclusion of Natives only. But this was not so, for, by referring to the 19th Section, it would be seen that only Magistrates of the 1st and 2nd Class could hold preliminary enquiry into cases triable by the Court of Session or a Supreme Court, and therefore a Magistrate of the 3rd Class, whether he was a European or Native, was not qualified to perform that duty. In point of principle, therefore, there was no difference; and the only question was a question of policy, whether European British subjects were to be liable to be committed by Natives, when they were not to be rendered liable to be tried by Natives. It appeared to him that the Clause under discussion ought to be retained as it now stood, and he had heard nothing to induce him to vote in support of the Motion.

The question being put, the Council divided—

Ayes 3.	*Noes* 6.
Mr. Erskine.	Sir Charles Jackson.
Mr. Sconce.	Mr. Forbes.
Sir Bartle Frere.	Mr Harington.
	Mr. Laing.
	Sir Robert Napier.
	The Chairman.

So the motion to omit Section 20 was negatived.

SIR BARTLE FRERE then moved the omission of the words "Covenanted Servant of Government or a European British Subject," and the substitution of the words "Justice of the Peace."

THE CHAIRMAN said, the Honorable Member who had moved this amendment had given no reason for the substitution of the words proposed, beyond what could be collected from his speech on the previous question. He (the Chairman) thought that in legislation every thing ought to be expressed in the clearest and simplest terms and in just so many words as were necessary to convey its real meaning. He did not know if the Honorable gentleman wished to restrict the Clause so as to give the Government a power of selecting those officers who should be entrusted with the duty of commitment. He could not suppose that there were any servants of Government, exercising the full powers of a Magistrate, who ought not to be vested with the power of commitment. But if the Honorable gentleman thought that the words of the Section, as it now stood, were too wide and ought not to apply to any person unless he were also a Justice of the Peace, he (the Chairman) had no objection to insert the words "having been appointed a Justice of the Peace" after the words "Covenanted Servant of Government or a European British subject." But he objected to the insertion of the words "Justice of the Peace" merely to conceal what was meant, or if it rendered reference to another Act necessary to know what was meant.

SIR BARTLE FRERE said, he did not wish to occupy the time of the Council by repeating the arguments he had already used, but it appeared to him that the words "Covenanted Servant or European British subject" meant something very different from a "Justice of the Peace." What he stated before was that we should abide by the law as it now stood, and that no person who was not a Justice of the Peace should be able to hold a preliminary enquiry. That was a different thing from saying that he must be a Covenanted Servant of Government or a European British subject. The Honorable and learned Vice-President said, "let us use words which express what we mean," and it was because the definition which it was proposed to substitute for the words "Justice of the Peace" did not express what was meant, that he (Sir Bartle Frere) objected to them.

He (Sir Bartle Frere) was himself a Covenanted Servant of Government, and he gloried in being one, and he hoped he should never be ashamed of being one. But that was quite a different thing from wishing to limit the office of Justice of the Peace to Covenanted Servants, and thus excluding a number of persons, who were quite as good Englishmen in every respect as ourselves, from exercising the same power. He had said that he was willing to remain where we were at present, but not to go backward. This Section would restrict the present functions of Justices of the Peace to two classes; one, the Covenanted class, might any day cease to exist as a distinct body of the Government service, and the other distinction, that of "European British subject," would exclude many men who now exercised the office of Justice of the Peace, and were every way worthy of it. He, therefore, thought that the words "Justice of the Peace" stated more correctly and precisely what was meant or wished to be said. As far as regards safeguards, he did not think that any one would be put into a Commission of the Peace who was not worthy of it; he must be selected by Government, and then his name must be inserted in a Commission issued by the Judges of the Supreme Court, and this was a much greater safeguard than mere selection by Government.

Mr. FORBES asked the Honorable Member (Sir Bartle Frere), with reference to what had fallen from him regarding the expediency of being able to make use of the services as Justices of the Peace of Foreign Europeans, or Americans residing in the interior, if he was under the impression that a Foreigner could be appointed a Justice of the Peace? He understood the Honorable and learned Vice-President to say that no one, owing allegiance to a Foreign Potentate, could be appointed a Justice of the Peace. In putting this question, however, he wished it to be understood that it was his intention to vote in support of the proposed amendment.

The CHAIRMAN said, the words of the Statute 2 & 3 William IV, c. 117, were—

"It shall and may be lawful for the Governor-General in Council of Fort William in Bengal, the Governor in Council of Fort St. George, and the Governor in Council of Bombay respectively, for the time being, to nominate and appoint, in the name of the King's Majesty, his heirs and successors, any persons resident within the territories aforesaid, *and not being the subject of any Foreign State*", &c.

Mr. FORBES said, then the case was as he had supposed, that a Foreigner would not be able to be appointed a Justice of the Peace, and consequently the amendment of the Honorable Member would not secure the object he had in view. He (Mr. Forbes), however, had no intention to oppose the amendment, but should give it his support.

Sir BARTLE FRERE said, his object was not that a person who was not a British subject should be appointed a Justice of the Peace. There were at the Cape Dutchmen by descent, who were born in a British Colony. Were you to exclude them?

Sir CHARLES JACKSON said, he did not quite understand the object of the proposed amendment. As he understood the law, Natives might be appointed Justices of the Peace for the Presidency towns, but in the Mofussil no one could be a Justice of the Peace who was not a Covenanted Servant of the Government or a European British subject. If the object was at some future time to bring in an Act of Parliament extending that power to Natives, so an Act might be brought in to alter the terms of the Section as they at present stood to effect the same purpose. Not understanding the object of the amendment, he should certainly vote against it.

Mr. LAING said, he would explain shortly why he should vote for the amendment. He had voted against the last Motion for the omission of the Section, notwithstanding the able speech of his Honorable Colleague opposite (Sir Bartle Frere), not that he advocated the policy of exclusiveness against Natives, but because he thought that, as cases of

the nature referred to in the Section would occur principally in the Presidency towns which were already provided for, the practical issue was, whether, for the sake of a few exceptional cases, powers should be given to Native Magistrates in the Mofussil, who could not try Europeans, to commit them for trial, and send them down possibly 1,000 miles to Calcutta. He was not satisfied that such a power could be safely given, and therefore he voted with his Honorable Colleague opposite (Sir Robert Napier) against omitting the Clause. But as the object would be equally attained under the amendment in a less invidious way, he should support it.

THE CHAIRMAN said, he thought it would be safer to let the Section stand as it was, because it really expressed what was meant. If the amendment were carried, it would be very easy for a Member of Parliament to propose the introduction of a Bill authorizing the appointment of Natives as Justices of the Peace in the Mofussil, and thus by a side-wind do what we were endeavoring to prevent. Such a proceeding would attract less notice than if leave were asked to bring in a Bill authorizing Natives to commit European British subjects for trial. It was because one class of words attracted attention, and another did not, that he preferred to use words which would be fully understood and which expressed their own meaning.

SIR BARTLE FRERE said, with regard to what had fallen from the Honorable Member for Madras, the words "Covenanted Servant of Government or a European British subject" were restrictive. As he had said before, the words "European British subject" would exclude any one born in a British Colony, in the Mauritius, for instance, or at the Cape or Australia, or in Canada, of French or German or Dutch parentage of pure European blood, and for three generations, perhaps, British subjects, but African or Australian or American British subjects, and not European British subjects. He had known of gentlemen in the service of Government, who were in that position, who were now Justices of the Peace, but who would not be able to act if the office were limited as was proposed.

The question being put, the Council divided :—

Ayes 6.	*Noes* 3.
Mr. Erskine.	Sir Charles Jackson.
Mr. Sconce.	Sir Robert Napier.
Mr. Forbes.	The Chairman.
Mr. Harington.	
Mr. Laing.	
Sir Bartle Frere.	

So the Motion was carried, and after some further amendments, the Section was passed as follows :—

"No person who is not a Justice of the Peace shall commit or hold to bail any European British Subject to take his trial before a Supreme Court of Judicature."

Section 21 (which provided the procedure to be observed when a European British subject was charged with an offence triable by a Supreme Court) was passed after a corresponding amendment.

Section 22 provided as follows :—

"When a European British subject has been arrested under a warrant, issued under the last preceding Section, by a Magistrate not being a Covenanted Servant or a European British subject, such Magistrate, if he considers that there is sufficient ground for proceeding, shall forthwith forward the person arrested to a Magistrate authorized to hold the preliminary enquiry, and to commit or hold to bail such person for trial before the Supreme Court, or if the offence with which such person is charged is bailable, shall, if sufficient bail be tendered, admit him to bail for his appearance before such Magistrate."

THE CHAIRMAN moved the omission of the above Section, and the substitution of the following :—

"When a European British subject has been arrested under a warrant, issued under the last preceding Section, by a Magistrate not being a Justice of the Peace, if such Magistrate considers that there is sufficient ground for proceeding, he shall forthwith forward the person arrested to a Justice of the Peace, or if the offence with which such person is charged is bailable, shall, if sufficient bail be tendered, admit him to bail for his appearance before such Justice of the Peace. When the person accused is brought or appears before a Justice of the Peace under this Section, such Justice of the Peace shall himself hold a preliminary enquiry into the case before he commits or holds to bail such person for trial before the Supreme Court of Judicature."

Agreed to.

Section 23 (relating to the arrest of Europeans not being British subjects or of Americans) was omitted, on the Motion of Sir Bartle Frere.

Section 24 was passed as it stood.

The Council resumed its sitting.

ROHILCUND DIVISION.

MR. HARINGTON postponed the Order of the Day for the adjourned Committee of the whole Council on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

STAGE CARRIAGES: PORT-DUES (CONCAN).

MR. HARINGTON postponed the Orders of the Day for a Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages," and on the Bill "for the levy of Port-Dues in the Ports of the Concan."

CATTLE TRESPASS.

MR. SCONCE moved that the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and Sir Charles Jackson, with an instruction to report within one month.

Agreed to.

SMALL CAUSE COURTS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for the adoption of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)," and for the suspension of the Standing Orders, in order that the Bill may be passed through its subsequent stages.

BREACH OF CONTRACT.

MR. LAING moved that Sir Bartle Frere be substituted for Mr. Beadon in the Select Committee on the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.).

MR. FORBES moved that Sir Bartle Frere be substituted for Mr. Beadon in the Select Committee on the Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the town and suburbs of Rangoon, and to the towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners and for levying rates and Taxes in the said towns."

Agreed to.

REPEAL OF REGULATIONS AND ACTS.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter" to the Governor-General for his assent.

Agreed to.

COURTS OF REQUESTS (STRAITS SETTLEMENTS.)

MR. FORBES gave notice that he would, on Saturday the 4th May, move the first reading of a Bill to extend the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales Island, Singapore, and Malacca.

LIMITATION OF SUITS.

THE VICE-PRESIDENT said, he mentioned when the Petition of the Trades' Association was presented this morning, that he would move to bring in a Bill to postpone the operation of Act XIV of 1859. That was an Act for the limitation of suits, and would come into force in a few days. The Petitioners represented that it had only recently come to their knowledge that the law in question would seriously

affect their rights, and they referred to the Section which reduced the period of limitation for instituting suits in respect of shop Bills from six to three years. Now the Act certainly would affect their rights, forasmuch as by the old law they would have had twelve years in the Mofussil and six years within the local limits of the jurisdiction of the Supreme Court, so that, if three years should have elapsed on the 5th May next, they would absolutely be barred of their rights, while according to the old law, they would have had three years longer in the Presidency towns, and nine years longer in the mofussil. Therefore, although the Act had been duly published in the Gazette, yet as the Petitioners were not aware of it, they would be barred of their rights, if they did not sue at once in the next few days.

For these reasons he proposed to suspend the operation of the Act for a few months, so as to give the Petitioners, and other parties, who might have to offer any serious objections to the Act, the opportunity of stating their objections before the Act came into force. He thought that it would be rather a difficult matter, after the Act had come into operation, to place parties in a right position. Rights would have been acquired, suits decided, and a subsequent Act might not remedy the evil. He therefore thought it safer to suspend the operation of the Act before it took effect.

He deemed it proper to mention that there had been no haste in passing Act XIV of 1859. The Bill was read a first time on the 7th July 1855, and a second time on the 28th of the same month. It was brought in by Sir James Colvile, and many of its Clauses were taken from a Bill on the same subject drawn by the Indian Law Commissioners. The Bill was published in the Gazette on the 1st August 1855, and nothing was done with respect to it until January 1859, when, after having passed through a Committee of the whole Council, it was republished for two months, and the Bill was finally passed on the 30th April of that year. Thus every possible opportunity was given to the public to make known their objections to the Bill as originally brought in, and to the Bill as amended in Committee. He believed that only one Petition had been presented against the Bill, and that did not proceed from the present Petitioners. Still he did not think it right to allow a Bill of this kind to come into operation when it appeared that some of the parties, to whom it applied, were not aware, until recently, that they would be affected by it. He would propose to suspend the whole law till 1st January 1862, but if any Honorable Member could show any good reason, he (the Vice-President) had no objection to confine the Bill to the Clause of which the the Petitioners complained.

With these remarks he begged to move that the Standing Orders be suspended, to enable him to introduce and proceed with a Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)."

SIR BARTLE FRERE seconded the Motion.

MR. HARINGTON moved that the Petition of the Calcutta Trade Association be read.

The Petition having been read—

MR. HARINGTON said, he had very serious doubts whether this Bill ought to be allowed to pass. He had supposed that the Petitioners, whose Petition had just been read, objected to the time at which the new law of limitation was appointed to come into operation, and that they prayed for an extension of that time, but he found that such was not the case. What the Petitioners complained of, was the law itself, or rather one Section of it, which they thought would injuriously affect their interests, and they asked for a modification of that Section. The Petitioners declared that they had only recently become aware of the existence of this particular Section; but "recently" was a very indefinite period, and the Petitioners had clearly had ample time to make themselves acquainted with the provisions of the Act now proposed to be amended, and of stating their objections to any part

of those provisions before the Act became law? The Petitioners enjoyed peculiar advantages for making themselves acquainted with the laws proposed in this Council, residing as they did within a few hundred paces of the Council Chamber, and it was their own fault if they failed to avail themselves of the advantages which they possessed in this respect. The Bill, in which the new law of limitation was contained, after being settled in a Committee of the whole Council, was ordered to be re-published for two months. The object of the re-publication was to give the public at large an opportunity of knowing how the Bill had been settled, and of stating objections to any of its provisions; but this period had been allowed to pass without any objections being made by the Petitioners. Nearly two years had elapsed since the Bill became law, during all which time the Petitioners had remained silent; but now that the period had nearly arrived for the Act taking effect, they came forward and asked the Council to modify a most important Section. It was obvious that there was not time for any Bill that might now be passed to reach many parts, of the country before the date on which Act XIV of 1859 would come into operation. In those places the law would be acted upon from that date, and if its operation were suddenly suspended at this late period, he thought that great confusion would ensue, and that much injustice might be done. He had reason to know that the Vakeels of the Mofussil Courts, and the people generally were well acquainted with the provisions of the new law of limitation, and were aware of the fact that the law would come into operation in the course of a few days. No representations against the law had come up from Madras or Bombay or from any other quarter, and he must say he did not think that they would be justified in suspending the law merely on the representations contained in the Petition which had only to-day been presented to them. For his own part, he was not prepared to alter the particular Section complained of by the Petitioners.

MR. LAING said, he thought that the course proposed by the Honorable and learned Vice-President was the right one. He did not think that a law of this nature should be amended without the fullest consideration, and the course proposed would admit of this being done.

MR. SCONCE said that Act XIV of 1859 would not take effect until Sunday next, and the Council might postpone the passing of the proposed Bill till next Saturday, reading the Bill only a first time to-day.

SIR BARTLE FRERE said, he thought the Bill did not touch the principle of the law, but merely suspended its coming into operation for a few months. The same thing was lately done with regard to the Penal Code. When an important law was not generally known, it was only right to allow time to let it be generally known, particularly when a large class came forward and said, as the present Petitioners had done, that it had only recently come to their knowledge that the law of limitation would seriously affect their rights. He thought there was no doubt that many persons, not only those gentlemen who had signed this Petition, but several Merchants also, were not till lately aware of the law being about to take effect.

MR. FORBES said, he did not think that the postponement of the Penal Code was a case in point. The Penal Code would not, when it was postponed, have been law until the 1st of May, whereas this law had been in force for two years. He thought this case would establish a very inconvenient precedent. If we postponed a Civil law, because its provisions were not generally known, we might next be called on to postpone a Criminal law. It was well known that the Penal Code created many new crimes, and if, on its coming into operation in January next, a criminal at the bar of the Supreme Court were to plead ignorance of the law in bar of conviction, he doubted very much if the

learned Judges of that Court would admit the plea as valid.

THE VICE-PRESIDENT said, he did not quite follow the argument of the Honorable Member for Madras. If a man committed a crime, of course ignorance of the law was no plea. But this Act provided that all suits commenced before the 5th of May next, would not fall within the operation of the law, but be governed by the periods of limitation heretofore in force. If the Petitioners were obliged to commence suits at once and take out writs, there might be a great deal of inconvenience occasioned, and, as regarded the Mofussil, even that course might be impossible. Now what injury would there be done to the other parties if this Bill were to pass. The only injury was that they would not have the benefit of a Statute of limitation. That was not a remedy availed of by any man of honor, unless his receipts were destroyed, and he did not think that the Council would injure any one by now delaying this Act, and continuing the present law till January 1862. If the consideration of the Bill were postponed till Saturday next, there would not be time to give notice of the suspension of the Act to all parties ; and therefore if the Act was to be suspended, it ought to be suspended at once. It must be observed that the present Bill was not a law for altering the law of contract between the parties. It merely proposed to declare what should be the *lex fori*, by providing that the Courts should not take cognizance of claims brought after a certain time.

The Motion for the suspension of the Standing Orders was then put and carried.

THE VICE-PRESIDENT moved that the Bill be read a first time.

The Bill was read a first time.

THE VICE-PRESIDENT moved (the Standing Orders having been already suspended) that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Section being read by the Chairman—

Mr. HARINGTON moved that the operation of the Bill be restricted to suits of the nature of those referred to in the Petition of the Calcutta Trade Association. The Section in which mention was made of these suits, was the only Section of the Act, of which the Petitioners complained. No objection had been taken to any other part of the Act, and he could not see why the operation of the whole Act should be suspended for several months, simply because the Petitioners objected to a single Section of it. If, therefore, there was to be any legislation at all at this time, he thought it should be confined to the part of the Act to which exception had been taken, and that it should not go further. Had the Petitioners complained that they had overlooked the particular Section of the Act which obliged them, within a certain period, to institute all claims, which would be affected by the provisions of the Act, otherwise they would be barred by the new Statute of limitation, and that in consequence of this oversight, a large number of claims remained uninstituted, for the institution of which, within the prescribed period, there was not now sufficient time, he might have felt more disposed to listen to them, but this was not their case. The Petitioners complained of the law itself. With regard to the particular Section objected to by the Petitioners, he would only say that it was not introduced by him, though he quite agreed in it. He believed he was right in stating that one of the beneficial effects which were expected to result from the introduction of this Section was that it would put a stop to the very large credits given by the tradesmen in the Presidency towns, whereby so many young men were led into extravagance and ruined.

Mr. LAING said, he thought that, as regards the particular Clause complained of by the Petitioners, there could be no doubt as to the propriety of passing this Bill. He rather agreed with them that the period of three years was too short a limitation for the limitation of trade debts. The period in England was six years, and he

thought that the same term should prevail in this country. Therefore, though he was quite willing to pass the Bill as regards that particular Section, he was not prepared at present to agree to the suspension of the whole law, for there were many points in it which required careful consideration, and he would wish that the Bill should stand over till the next Meeting of the Council.

After some further discussion, the consideration of the Bill was postponed.

The Council adjourned till Tuesday the 30th instant at 5 o'clock in the afternoon.

Tuesday Evening, April 30, 1861.

PRESENT :

Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

The Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
The Hon'ble S. Laing,	C. J. Erskine, Esq.,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	The Hon'ble Sir C. R. M. Jackson,

REPEAL OF REGULATIONS AND ACTS.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Right Honorable the Governor-General had given his assent to the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter."

LIMITATION OF SUITS.

THE CLERK presented a Petition from the Landholders and Commercial Association of British India, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits).

Also a Petition from certain native inhabitants residing in the suburbs of Calcutta, praying for a postponement of the operation of the above Act.

THE VICE-PRESIDENT said that, as these Petitions related to the Bill which was about to come before the Council to-night, he begged to move that the Clerk be requested to read them at length.

The Motion was carried, and the Petitions read accordingly.

The Order of the day being then read for the adjourned Committee of the whole Council on the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON said that he had employed the short time which had elapsed since the adjournment, on Saturday last, of the further consideration of this Bill, until to-day, in looking into the papers connected with the passing of Act XIV of 1859, which this Bill had been brought in to amend by suspending the operation of that Act from the 5th May next until the 1st January 1862, and the result had been to confirm the doubts previously entertained by him as to the sufficiency of the ground shown for the proposed suspension of the law, certainly to the extent to which this Bill went. But before proceeding further, he felt that it was due to the Calcutta Trades' Association, on whose Petition they were now acting, that he should at once call attention to the fact that the Petitioners in their Petition had not asked that the operation of any part of Act XIV of 1859, much less that the operation of the entire Act should be postponed by the suspension of the Standing Orders, and by the passing of a temporary law pending future legislation. The Petitioners merely took exception to a single provision contained in Act XIV of 1859, and they asked the Council, in proper and respectful language, to amend that provision. This was all that the Petitioners prayed for. Their perfect right to come up to the Council with such a prayer did not admit of a moment's doubt. The Petitioners considered themselves aggrieved by a law passed by this Council, and using, as had already been observed, proper and respectful language, they asked the Council to remove what they, the Petitioners, regarded as a grievance by amending the law. Nothing could be more reasonable or proper in itself than this. Petitions of a

similar nature were constantly presented to the Council—and what he would ask was the course of action usually—he might say almost universally—observed on the presentation of such Petitions. The course was this. The Clerk of the Council having reported to the Council that he had received such a Petition, some Honorable Member rose and moved that the Petition be printed. Thereafter any Honorable Member, who thought proper, brought in a Bill to amend the law, either in the way prayed for by the Petitioners, or in any other way which he might consider preferable. The Bill was read a first time without debate, and, if it appeared unobjectionable in principle, it was read a second time also. The Bill was then referred to a Select Committee for report, and published for a certain period for general information and in order that the public at large might have an opportunity of making themselves acquainted with the provisions of the law proposed to be enacted, and of stating any objections thereto,—and so exceedingly anxious had the Council always been that the public should have every opportunity of being heard upon the Bills before the Council, that it almost invariably happened that Bills remained before the Select Committees, to which they were referred, far beyond the period fixed under the Standing Orders. The Bill, which eventually became Act XIV of 1859, was in this way before the public for more than three years previously to the Select Committee making their report upon it. The Bill having been reported upon by the Select Committee, was taken into consideration by a Committee of the whole Council, by which its details were finally settled. The Bill was then read a third time and passed, and the assent of the Governor-General having been given to it, the Bill became law. This was the course of action observed on Petitions presented to the Council of the nature of the Petition of the Calcutta Trades Association. This was the course which Bills, introduced into the Council, usually ran under the Standing Orders of the Council, and he thought that it was a proper and sensible course, and one highly advantageous and useful to the public. He submitted that it had never been the practice of the Council on a Petition, such as that now before them, which simply took an objection to a single provision of an Act of this Legislature, passed after the observance of all the formalities which he had just described, and which asked only for a modification of that one provision, to suspend the Standing Orders, and to pass hurriedly through its several stages a Bill to postpone for a long period the operation of the Act to which the Petition related, not because they had made up their minds that the law objected to, was a bad law—not because they had satisfied themselves on this point—but in order that they might have time to consider whether there was any force in the objection which had been urged to the particular provision of Act XIV of 1859 complained of by the Calcutta Trades' Association, and in order that other parties might have an opportunity of bringing forward objections to other parts of the Act. This he understood was what they were now asked to do. He must repeat, however, that this was not the petition of the Calcutta Trades' Association. The prayer of their Petition was much more reasonable in its character. Seeing reason to believe that a particular provision of the new law of limitation would injuriously affect certain classes of tradesmen, they prayed that that provision might be amended, but they did not ask that this should be done by means of any special legislation, or with greater speed than was usually observed in the amendment of laws passed by this Council, and he (Mr. Harington) could not understand why the Council should go out of their way to do what the Petitioners had not asked them to do. He could not understand why the Council should volunteer this Bill, and more especially why they should carry the Bill beyond the particular Section of the Act to which the Petitioners objected. The Petitioners had not asked that their case might be made an exceptional one; they seemed quite willing to wait the usual of course

legislation in this Council, and he certainly saw no sufficient reason for their deviating from that course on this occasion. Let him remind the Council how differently they acted in the case of the Recovery of Rents Bill brought in last year by his Honorable friend the Member for Bengal, whom he was very glad still to see in his place, though it was for the last time. That Bill also related to a question of limitation, and was introduced to amend one of the limitation Clauses of Act X of 1859. In so far, therefore, the case of the Petitioners, to which his Honorable friend's Bill related, ran on all fours with the case of the Petitioners now under consideration. Two, or he believed three Petitions were presented to the Council against the Clause of the Act to which he had just referred, and prayed for relief. The first of these Petitions was presented on the 31st July 1860, and was ordered to be printed. The second Petition was presented on the 8th September 1860, and the same order was passed in respect to it. On the 15th September, the Honorable Member for Bengal brought in a Bill to amend the Section of the Act complained of by the Petitioners. A third Petition was presented on the 22nd September, which was also ordered to be printed, and on the same day the Bill was read a second time. On the 29th September, the Bill was referred to a Select Committee in the usual course. On the 8th December, the Select Committee made their report. On the 15th December, the Council resolved themselves into a Committee of the whole Council upon the Bill which was reported upon the same day. On the 22nd December the Bill, after being recommitted, was read a third time and passed, and on the 26th of December the Bill received the assent of the Governor-General. This Bill, therefore, although it also related, as he had said, to a question of limitation, and affected a very large and a very important class of the community, was not hurried through the Council, but passed through its several stages at the regular intervals of time in accordance with the Standing Orders. The error in Act X of 1859, which the Bill of his Honorable friend, the Member for Bengal, was introduced to rectify, was obvious upon the face of the Act, and there could be no doubt of its injurious effects in respect to those reached by it. The case of the parties affected by that Bill was very much stronger than the case of the Petitioners before the Council. They did not pretend that the Section of Act XIV of 1859, of which they complained, would operate as a denial of justice in their case, which was really the effect of the Section of Act X of 1859 which the Bill of last year was brought in to amend, and yet the Council did not think it necessary to depart from the usual course of legislation in favor of that Bill. The Standing Orders were not suspended in order that it might be pushed rapidly through its several stages. The Bill took the regular course. The evil complained of was remedied in what he might call a perfectly constitutional manner, and no just ground of complaint was afforded to any one. It certainly appeared to him that, instead of hurrying through the present Bill in the hasty manner that they were now doing, they would do well to follow the careful and deliberate course observed in the case of the Bill to which he had just been referring.

He would now pass on to the history of Act XIV of 1859. Some Honorable Members were probably not aware that it was nearly twenty years since that Act was first conceived ; but such was the fact. Various amendments of the existing law of limitation were proposed prior to the year 1842, when the Indian Law Commissioners took the matter in hand, and in the year just mentioned, they prepared a project of law which—with considerable modifications no doubt—eventually became, he might say, Act XIV of 1859. Amongst the Law Commissioners, whose names were signed to the original draft Act, were Mr. Amos and Mr. Cameron, two eminent English lawyers. The Law Commissioners having proposed only one year's limitation in respect to certain actions, for the institution of

which six years were now allowed in the Presidency towns, and twelve years in the Mofussil, at least on this side of India, the then Chief Justice of Calcutta suggested that the provision was comprehensive enough to embrace a great number of cases, in which the limitation of one year would be found too short. On this suggestion the Law Commissioners made in their report these remarks :—

"In this country the incomes of men or their means for discharging the debts they incur for subsistence, lodging, labor, &c., and the accommodations and supplies they require f om day to day in the ordinary course of life, a e, for the most part, received monthly, and it is expedient that they should be applied as they are received, to meet those current charges. It is, we conceive, very much for the general interest, to promote the early settlement of such debts. This may be done in some degree, by barring the demand for them after a reasonable time. When the debt ought to be settled within a month, a year seems to be a reasonable time to allow for seeking the assistance of a Court to compel payment, provided the debtor was within the reach of process. And it is here to be observed, that all the time the debtor may have been absent from the Company's territories, and, therefore, beyond the reach of process, is to be excluded in computing the period of limitation, which is a great extension of the English law, by which a limitation that has begun to run continues to run, notwithstanding subsequent absence."

The Law Commissioners then quoted from Burge :—

"By the law of Scotland, actions of debt, not founded upon written obligations, held to include merchant's accounts, both wholesale and retail, workmen's wages, servant's wages, aliments furnished to a family or domestic establishment, and house rents, where the lease is verbal, must be pursued within three years."

This was the period of limitation now complained of by the Calcutta Trades' Association. The Commissioners went on to say—

"By the French Code, actions by keepers of inns and taverns on account of lodging and board, by the artizans and work people for payment of their daily labor, &c., are prescribed in six months, and actions by merchants for commodities sold to persons, not merchants, and by servants hired by the year for their wages, &c., are prescribed after a year.

"We at present adhere to our opinion of the propriety of the limitation we proposed, and have continued it in the draft now submitted. But we have requested the Trade Association of Calcutta to consider the subject, and to communicate to us any observations that may have occurred to them upon it, as one in which they are particularly interested, and on which it is desirable to know the conclusions to which their experience leads them. We have not yet received a reply from them, and we do not think it necessary to wait for it; if we are favored with a report from them, we shall submit it for the consideration of your Honor in Council."

Shortly after the submission of this report, the reply of the Calcutta Trades' Association to the communication which had been addressed to them by the Indian Law Commissioners, was received. With the permission of the Council he would read what they said.

"We are honored with your letter, dated the 3rd Instant, favoring us with extract of a proposed Act of the limitation of suits in the Courts of Her Majesty and of the East India Company, specifying certain suits which, subject to certain exceptions, it is intended should not be admitted in the Courts unless they are instituted within one year from the time the cause of action arose.

"We have also been favored with your note of the 19th Instant, forwarding your office copy of the proposed Act for the information of the Committee of the Trade Association, which we represent.

"As no exceptions are given in your letter, we conclude that you wish us to state such as appear to us to be desirable, and also to offer such remarks as we may think proper to lay before the Commissioners.

"We accordingly proceed to submit such observations and exceptions as we have to offer.

"Suits for debts on account of wages of servants, artizans and laborers—it is very desirable that these claims should be, as they usually are, promptly settled. For hire of animals and vehicles, these accounts, like tailors' and shoemakers' bills, though demanded monthly, are frequently not paid for years, and where such accommodation is allowed, it would be bad to disallow the tradesman's claim after the expiration of a year, by debarring him from suing in the Courts for its amount, when he finds no other course will obtain payment.

"The same remarks will apply, though not so strongly, to retail supplies of victuals and articles of daily consumption, for tavern bills, for bills for board and lodging, and for lodging only, for the rent of buildings, and on any other account, subject by established customs to settlement by the month or a shorter period.

"By supplies of victuals and articles of daily consumption, we understand butcher's, baker's, milkman's, butterman's and other bills of a

similar nature, connected with the usual monthly bazar account, but not articles of consumption obtained from European and native Tradesmen, such as beer, wines, hams, cheese, tea, &c. In Great Britain, the limitation to one year would, doubtless, apply to bills for groceries, but in this country, the European establishments, such as D. Wilson & Co., W. W. Robinson & Co., G. W. Bright & Co., and others, also the establishments in the China Bazar, could not be subject to this limitation.

"We understand by the printed Act herewith returned, that in all cases where actual payment cannot be obtained within the year for bills coming within the meaning of the proposed Act, a written acknowledgment of their correctness, and a promise to pay in such as may suit the nature of the transaction, will be sufficient to form an exception.

"We hope that the case of persons absconding shortly after having contracted a debt, and not being again heard of within the year, will be considered an exception.

"Also where persons have left Calcutta and gone into the Mofussil, and have been applied to for payment, by letter, but without success, such letters being, in many instances, systematically neglected, these persons to be considered as having absconded, for purposes of this Act, proof being given of despatch of such demand through the Post Office, and of its delivery by the Mofussil Post Office peon, of which the Post-Masters' certificate shall be deemed sufficient proof.

"We of course see that the effect of the law, if it be so passed as to affect all trades, for it is the custom of almost all trades in Calcutta to demand payment monthly, will be to limit credit to one year or even a shorter period, which would be very desirable, if practicable, but which, in many cases, it is not under the system which at present obtains."

On this letter the Law Commissioner observed :—

"It will be perceived that the Trade Association approve generally of the principle of the proposed limitation, and of the object intended by it, which they consider to be very desirable, if practicable, but they think that in some cases, it may not be practicable under the system which at present obtains.

"The Association mentions certain cases, in which they think it would be hard to disallow the tradesman's claim after the expiration of a year, but they immediately afterwards notice a provision of the proposed Act, by which the anticipated hardship will, we conceive, be sufficiently guarded against, if ordinary diligence be used.

"They rightly understand that by this provision in all cases where actual payment cannot be obtained within the year for bills coming within the meaning of the proposed Act, a written acknowledgment of their correctness, and a promise to pay will be sufficient to form an exception. It will be observed on reference to the draft that a simple acknowledgment in writing, signed by the party liable, or a payment of any part of the amount due within the period of limitation, will be sufficient to open a new period of limitation within which the debt may be recovered by judicial process.

"The Association indeed would seem to be content with the provision, except in the case of persons absconding shortly after having contracted a debt, and not being again heard of within the year, and in the case of persons having left Calcutta and gone into the Mofussil who have been applied to for payment by letter without success."

The Law Commissioners then went on to notice the provision contained in the Bill prepared by them in respect of absence, all the time of which they pointed out would be excluded in computing the period of limitation, which they remarked was a great extension of the English law in favor of the creditor, and they concluded their report by observing that upon the whole they found no ground in what was stated by the Calcutta Trades' Association to alter the recommendations they had already offered on the subject.

The papers which he (Mr. Harington) had just read, would show the Council at how early a period the particular attention of the Calcutta Trades' Association had been called to the proposed amendments in the law of limitation, and if that Association failed closely to watch the subsequent stages of the Bill brought in to amend the existing law, there was the less excuse for any oversight on their part. It was right, he should mention, that the Section in the draft of the original Bill, which prescribed one year's limitation for the class of suits described therein was, doubtless, not so general in its wording as the Section of the Act of 1859, of which the Calcutta Trades' Association now complained, and many suits which would fall under that Section would probably not have been affected by the Section of the original Bill ; but it was clear from the concluding paragraph of the letter of the Calcutta Trades' Association, which he had read, that the Association thought it quite possible that the Bill might be so drawn as to reach every trade, for they said that "it was the custom of almost all trades in Calcutta to demand payment monthly."

The dates on which Act XIV of 1859 passed through its several stages, were mentioned by the Honorable and learned Vice-President on Saturday last. It might be convenient that he (Mr. Harington) should repeat them. They were as follows:—The first reading of the Bill took place in July 1855. The Bill was read a second time on the 28th of the same month, and referred on the same date to a Select Committee for report. The report of the Select Committee was presented on the 8th January 1859. On the 22nd January 1859, the Bill was brought under the consideration of a Committee of the whole Council, and was reported, after several lengthened discussions, on the 12th February. It was recommitted on the 19th February, and ordered on the same day to be republished for two months for general information. On the 30th April, the Bill was recommitted, read a third time and passed, and on the 5th May, the assent of His Excellency the Governor-General was given to the Bill. During the whole of this long interval from the first introduction of the Bill until it passed into law, no Petitions were presented against the Bill by the Calcutta Trades' Association, or by the corresponding Institutions at the other two Presidencies, although the Bill was twice published for general information and with a view to elicit opinions and objections. Petitions against parts of the Bill, other than the part complained of by the Calcutta Trades' Asssociation, were presented from other quarters; but to that particular part of the law, if he recollected rightly, no objection was taken by any one, certainly not by any of the Trades' Associations, and although it was two years to-day since the Bill was read a third time and passed, they were now asked for the first time, by a Petition presented only last week, to alter a most important provision in the Act. Had the Petitioners applied for an extension of the time which the Act allowed for the institution of old claims which would be affected by the new limitation, to enable them to obtain a hearing for a number of suits, the cognizance of which would otherwise be barred, on the ground that they had really overlooked the particular Section of the Act which related to old claims, or that unexpected obstacles or impediments had arisen in the way of their instituting claims, which had been allowed to lie over for considerable periods, he should have felt more inclined to listen to their Petition, though he could not admit the sufficiency of the reason assigned by the Petitioners in one of the Petitions which had been read to them to-day for not having preferred their claims in a competent Court within the time allowed by Act XIV of 1859, namely that they had been embarrassed by the working of the Income Tax. But the Calcutta Trades' Association did not say that they had overlooked the particular Section, to which he had just been referring, and they had not asked for an extension of the time allowed in that Section. As already noticed, their prayer was for the amendment of the law itself. So far from the particular Section relating to the institution of old claims not being generally known throughout the country, he had reason to believe that the very contrary was the case, and as the best proof that could be given that he was right in what he had just stated, he was credibly informed that thousands of suits had lately been instituted in order to save them from the operation of the new law. The suitors in these cases, never imagining that the Council would agree at the last moment to suspend the operation of the Act, had felt that they had no alternative but to institute their claims, and they had instituted them accordingly at a great expense on account of stamp paper and other law costs, which they might have avoided, had they been aware that the operation of the Act would be postponed for several months. The consequence would be that the persons who had been driven into Court by the imperative terms of the law, would find themselves placed in a worse position than those who, whether from carelessness or otherwise, had overlooked the law, and for whose

benefit the present Bill had been introduced. He did not think that this would be right, and it appeared to him that, if they passed this Bill, they would be bound to indemnify all those who, not knowing that such a Bill would pass, had incurred the expense of prosecuting or defending actions which had been brought only in consequence of the stringent terms of the Act, the operation of which it was now proposed to suspend until the commencement of next year. He believed he might say that the new law of limitation was very generally approved of throughout the country. Both Regulation and non-Regulation officers spoke highly in its favor, and he understood that it had been extended to most of the non-Regulation Districts. The minds of the community generally had become familiarized with the provisions of the law. Doubtless all the mercantile and other transactions of the last two years, which were subject to the Statute of limitation, had been regulated with reference to the new law, and the various suits reported to have been recently instituted bore testimony to the fact that there was a very general expectation and assurance that Act XIV of 1859 would take effect from the date on which at the time of the passing of the Act it was appointed to come into operation, namely the 5th May next. Under these circumstances, it seemed to him that it behoved the Council to pause and to consider well before they passed a Bill, the effect of which would be to throw the whole country back again, for some months at least, upon the old, and what he had hoped, might now be regarded, as the exploded law—upon a law which was condemned as a bad law upwards of twenty years ago, and declared to require large amendments,—and to deprive the country for a considerable time of a law which took twenty years to mature and pass, which was generally considered an excellent law, and to only a single Clause of which had any objections been taken up to this time. But this was not all. A further effect of passing the present Bill would be, that it would unsettle men's minds as to the future, for no one would know what was eventually to be the law of limitation, and the community, in regulating their transactions which might be affected by the law of limitation, would have no certain law to guide them. Suits which ought to be brought, might be held back. Suits which might safely be held back, might be brought. In short, no end of confusion would ensue, and, as remarked by him on a former occasion, he feared that much injustice might be committed. He could not help thinking that proceedings, such as those in which they were then engaged, were calculated seriously to shake the confidence of the public in their legislation as showing there was no certainty in it, and in themselves as a legislative body. People would think that that legislation must have been of a very hasty, ill-digested and ill-considered character, which could be shaken by a Petition like that of the Calcutta Trades' Association, or which could not stand the ordeal of such a Petition as that, and the suspension of the operation of which could be so easily and so expeditiously procured. Who would care to study their projects of law, when a Petition presented by a small—though it might be a very respectable and influential Section of the community—could, at any time, even just when an Act passed years before, after much deliberation, was about to come into operation, obtain its suspension without any enquiry being made, and that, as he had said before, not because the Council were satisfied that the law was bad, for, so far as he understood the general feeling of the Council, opinions were the other way, but in order that time might be gained to consider whether those who passed the law might not possibly have been wrong in one of the provisions. He did not mean to say that their laws were to be like the law of the Medes and Persians, which altereth not. If error had been committed, let it be shown, acknowledged, and rectified. In nothing, perhaps, was the imperfection of human wisdom and understanding more conspicuous than in the work of legislation. This was abundantly tes-

tified by the numerous declaratory and explanatory Acts, and Acts to amend Acts which were to be found in the Statute Books. But constant changes in the laws of a country must be bad and highly injurious to the country and the community at large, and he contended that no law which had been passed after full consideration, should be modified, unless upon the clearest proof of error, or unless circumstances had so entirely altered, that the law was no longer applicable, much less should any suspension of the operation of a law be permitted, unless upon the occurrence of an emergency which should appear to leave no alternative. He could not perceive that any such emergency had arisen at this time, which rendered necessary, or which would justify the passing of this Bill. He did not propose to enter at this time into the large questions, as to whether limitation laws were just, expedient, or pactic laws or not, or as to whether the plea of limitation was an honest plea, or a plea of which an honest man could ever properly avail himself, or as to whether it was or was not an Utopian idea to suppose that a healthy state of credit could be produced by means of a limitation law. But confining himself to Act XIV of 1859, he must be allowed to say, that, looking to the great care, consideration and labor bestowed in the preparation of that Act, of which he could speak from personal observation, having been a Member of the Select Committee; remembering how anxiously and carefully every Section of the Act had been discussed and weighed, and bearing in mind the great and able men who had taken part in the preparation of the Act, the Honorable and learned Vice-President and his learned predecessor Sir J. Colvile, the Honorable and learned Judge opposite (Sir Charles Jackson), and his learned predecessor Sir A. Buller, Messrs. Amos, Cameron, Millett, Eliott, Borradaile, Ricketts, and Currie, the present Lieutenant-Governor of Bengal, and others, he did not think there was much likelihood of their having fallen into error in settling the provisions of the Act, and he felt sure that they ought not to allow their confidence in the soundness of the Act to be disturbed or weakened by the Petition, which had been presented to them on the part of the Calcutta Trades' Association.

With regard to the Trades' Association, he must say he thought that they could not have sufficiently considered the Act, and that they had complained of the Section of the Act, mentioned in their Petition, without adequate cause. The Petitioners in the last paragraph of their Petition complained of the *ex post facto* character of Act XIV of 1859. No doubt, it was an *ex post facto* Act, inasmuch as it applied to claims created before, as well as to claims accruing subsequently to, the date fixed for the Act to take effect; but the Act contained a Section which allowed two years from the date the Act passed for the institution of old claims, which, at the time, was considered quite sufficient by the Council. The Act would, in no way, interfere with tradesmen giving their customers any length of credit that they pleased. So long as it was agreed that a sum of money was not to be considered as due, and therefore not payable, until a certain time, until that time expired, there could be no cause of action. It was scarcely necessary to add that the period of limitation began to run only from the time when the cause of action accrued. It seemed to him that the Calcutta Trades' Association must have overlooked Section IV of the Act. That Section provided that—

"If, in respect of any legacy or debt, the person who, but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due, by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission; provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them."

In connection with this Section, he might mention a circumstance which would show the Calcutta Tradesmen that, when the Bill was before the

Council, he was not unmindful of their interests. Originally there was a second proviso to the Section which he had just read, which required that in every case in which the acknowledgment mentioned in the Section could have been registered by virtue of any law or regulation in force at the time and place of the signing of the acknowledgment, it should be registered within three months from the date thereof. From a remark which fell from the late Honorable Member for Bengal, he (Mr. Harington) saw at once how injuriously this proviso would affect the tradesmen of the Presidency towns in respect of their up-country customers, and he moved in consequence the omission of the proviso. In speaking on the Motion, he instanced the case of a Calcutta tradesman applying by letter to an Officer in a distant station for payment of a bill which had been sometime due, and receiving a reply acknowledging the debt and containing a promise to pay. He pointed out that this acknowledgment and promise would not avail to exempt the claim from the operation of the law of limitation, or to give the tradesman the benefit of the Section, unless the reply was registered; but that the Officer could scarcely be expected to go through the form of registration, and that the formalities required by law for registering deeds would prevent the tradesman from fulfilling the conditions of the Section as it now stood. The Council agreed with him, and the proviso was ordered to be struck out. He repeated that this would show the Calcutta Tradesmen that their interests and convenience had been kept in view by the Council in settling the details of the Bill. As Section 4 of the Act was now framed, no tradesman ought to experience any difficulty in keeping his outstanding claims alive. Every acknowledgment of a debt would give a new starting point, and if an acknowledgment, which might justly be demanded, was withheld, it was for the tradesman to consider, whether the time had not arrived for instituting an action. Then it seemed to be supposed by some tradesmen that absence at home on furlough, which, in the case of both Civil and Military Officers, often extended to three years, might cause a just claim to be barred under the operation of the new law of limitation. A reference to Section 13 of the Act would show at once that this was entirely a mistake. That Section declared that—

"In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in India, shall be excluded from such computation, unless service of a summons to appear and answer in the suit can, during the absence of such defendant, be made in any mode prescribed by law."

He believed he was right in saying that there was no mode prescribed by law for serving a summons on a defendant who was out of the country. Considering therefore that, with all these safeguards, the tradespeople of Calcutta could not be injuriously affected by the operation of the Section of Act XIV of 1859 referred to in the Petition of the Calcutta Trades' Association provided they were commonly vigilant and active and properly mindful of their own interests, he could see no reason for any modification of that Section, and as this was the only Section complained of by the Calcutta Trades' Association, it followed he thought that there could be no ground for their going on with the present Bill. He begged therefore to move that the further consideration of the Bill be postponed until the 1st January 1862. He would only add that, if any Honorable Member would take upon himself the responsibility of bringing in a Bill to amend Act XIV of 1859, he would give the Bill his best consideration. He would not promise to support the Bill, but he should probably not object to allow the Bill to be read a second time without binding himself to the principle of it, in order to give the public an opportunity of expressing their sentiments upon it.

Mr. LAING said, the consideration which he had been able to give this matter since Saturday last, had satisfied him that we ought to pass this Bill in the form in which it had been introduced by the Honorable and learn-

ed Vice-President. The real question at issue was, whether we should give the Petitioners the opportunity of recovering their claims, or allow their rights to be barred under a Statute of limitation greatly shortening the usual period, when they came forward, objecting to it, and saying they were taken by surprise. The question was not one of abstract legal principle or of moral right, but purely of commercial convenience. As a matter of right and principle, a man should pay a just debt after sixty as well as after six years. But convenience stepped in and said, there was a term beyond which accounts must not be kept open, and claims indefinitely suspended. That period had been fixed by the experience of the greatest commercial nation in the world, namely England, at six years, and various attempts to alter the period had been steadily resisted. Now all the theories that could be advanced, failed to satisfy him that the sound common sense of John Bull was far wrong in such a matter. It had been repeatedly attempted to alter the period in England, but the practical sense of the commercial community had induced them to adhere to that rule. If there was any difference in this respect between England and India, it was in favor of a longer period in India. The facilities of intercourse were much greater in England than in India. He therefore felt no hesitation in saying that no amount of abstract theory would weigh with him in a matter of this sort in comparison with the common sense of the commercial community. The Petitioners might have been supine formerly. Whatever the reason was, and whether they were right or wrong in not having been alive to their own interests at an earlier period, it was clear that a large portion of the commercial community in India objected to the law now, and had represented that their rights would be seriously affected by it. In that case there could be no doubt that the subject ought to be re-considered. Seeing therefore that the question must be reopened, was it better, he would ask, that in the meantime we should let the Act come into operation, or suspend it? He thought there was the greatest possible advantage to be derived from the course proposed by the Honorable and learned Vice-President, of suspending the Act and leaving things just as they were. If this were not done, the inevitable result must be that a mass of suits would be brought to save actions from lapsing, which would otherwise not have been brought. He hoped he should not be offending his learned friends on either side of him, by saying that he was not such a great admirer of law-suits as to wish to see them multiplied. On the other hand, it would be equally embarrassing, where those suits were not brought, that the parties interested should be deprived of the opportunity of recovering their just claims, and debtors should be relieved from their legal obligations, by the operation of an Act which might be altered in three months. He therefore thought that all the arguments which could be urged, were in favor of the immediate suspension of the Act. He could not conceive that any man had a vested right in getting off the payment of his just debts. As he said before, it was a matter of purely commercial convenience that a line must be drawn somewhere or other. It therefore seemed to him that the whole argument of practical convenience was on that side, and the only thing in the shape of an argument on the other side was that it was very inconsistent and undignified for a Legislative Assembly to reverse a law passed by them.

MR. HARINGTON remarked, he did not say *reverse*, but *suspend the operation of* a law.

MR. LAING resumed. It came to the same thing. His argument was that there was a great practical convenience in suspending the law, and the only argument against doing so was drawn from the supposed dignity of this assembly. He could admit that argument if any violent pressure were forced upon us from without. If we had a large mob thundering at the door, or invading the Chamber, then he might

agree with the Honorable Member for the North-West that we should die like Roman Senators in our seats rather than yield an inch. But among the five or six very respectable gentlemen below the bar who were doing them the honor to listen to their proceedings, he saw no pikes or caps of liberty, and nothing in their demeanor to make him fancy that they were Robespierres or Dantons; and he really thought that we might deliberate upon what was expedient or proper on the present occasion without the imputation of yielding to intimidation or the risk of our motives being misrepresented. In all such cases we had only to do what was reasonable and sensible, and he thought that, by so doing, the character of this assembly would rise in public estimation. He would not trouble the Council with any further remarks, and would conclude with the expression of a hope that they would pass this Bill.

MR. SCONCE said, he could well understand that any person who entertained the strong opinions which had been expressed by the Honorable Member who had just sat down with respect to the change made by Act XIV of 1859 in the limitation applicable to suits brought to recover money due upon the sale of goods, should thoroughly concur in the necessity for passing the Bill which had been introduced by the Honorable and learned Vice-President. Upon that point he (Mr. Sconce) professed to have formed no opinion. It seemed to him to be sufficient to know that the law, of which they were now called upon at so short notice to postpone the operation till the 1st January 1862, was enacted two years ago, and that it had previously undergone much discussion by parties perfectly competent, as we might suppose, to give the whole question of limitation the best consideration. Without venturing to offer any opinion on the question whether the 8th Clause of the 1st Section of the Act (realization of claims for money on account of goods sold) should be confined to three years or be enlarged to six years, he felt himself bound to oppose the further proceeding of this Bill. The Honorable gentleman who had just sat down said that we should confidently rely on the opinion of the commercial community which they had expressed in favor of this Bill. On the contrary, he thought that the opinion of the commercial community, so far as that was to be gathered from their acts, was quite the other way. The law was not confined to Calcutta. It extended to Madras and Bombay; and, without considering, as he had no means of doing, what might be the effect of the law in those Presidencies, it seemed to him that the utter silence of the commercial communities of those Presidencies, as to the operation of the new law of limitation, by no means supported the opinion which had been expressed here. They seemed to him to sit down quite content with the law. He knew not, as had been said, whether the strong common sense of John Bull had induced the English people to fix the period of limitation at six years; but if it were so, he might ask the Council to recollect the old proverb that, when men changed their country, they changed their minds. The tradesmen of Madras and Bombay very probably agreed with the promoters of the Act of 1859. They probably felt that the Act was founded on a right principle, and if they were called on in any way to sacrifice the kindly feeling that might be supposed to be manifested in allowing debtors a longer accommodation, they might be sensible that, on the whole, the more stringent law would operate more to the public benefit as well as to their own advantage as creditors. But however that might be, no objection whatever had been taken to Act XIV of 1859 by the other Presidencies, and surely the inference to be drawn from this fact was quite different and of another kind than that pressed upon the Council by the Honorable gentleman.

Then the law affected the Straits also, and how would you deal with people there? Were they to be supposed to be dissatisfied also? He did not say whether this was a matter affecting the

dignity of this Council or not. But he could not help saying that, considering the weight which all legislatures attached to the stability of their enactments and the matured principles that determined their proceedings, it was a most material argument to say that we should not at the eleventh hour, within one quarter of the twelfth hour, without any previous intimation of dissatisfaction, suspend all the rules laid down for the conduct of the proceedings of this Council in order that we might postpone the operation of a law which he was justified in saying the vast majority of the people entirely accepted and were prepared to see carried out. He had no share in the enactment of the law which was now under discussion by the Council. The law was passed shortly before he had the honor of a seat in this Council, and so far he begged to be permitted to say that personally he had no interest in advocating one Section more than another. But he thought that a good deal might be said apart from anything he had yet said against the proposed suspension of the Act. It was not merely a question of a debtor not paying within any time what he justly owed. There was a good deal more in the Act than the relation of creditor and debtor. He would refer to the 1st Clause of the 1st Section of the Act which related to suits to enforce the right of pre-emption. By that Clause the period of limitation for the institution of suits to enforce the right of pre-emption was reduced to one year. Hitherto the law had allowed 12 years. Now, it was obvious that the operation of this new Clause necessarily corroborated the title of a purchaser whose purchase dated beyond one year. So that, as regards claimants to property on the ground of a right of pre-emption, all persons who had purchased any property, and whose purchase had been made for more than one year before the claim was preferred, had acquired a right by the Act which the suspension now proposed would nullify. He would also refer to Clause 3 which related to suits to set aside the sale of any property, moveable or immoveable, sold under an execution of a decree of Court or of Revenue Officers or for arrears of Government Revenue or other demands recoverable in like manner. In such cases the period of one year was also fixed. Therefore, up to the 5th May coming, such properties which might have been purchased beyond one year would be barred against any demand that might be made by an adverse claimant. If you relaxed the right which you had already created, it seemed to him that you injuriously invalidated the interests that had been acquired under that Clause. In the same manner he might refer to the 4th Clause which related to leases granted by the Revenue authorities, and accepted it might be in some degree under the guarantee offered by this Act. He knew not but there might be other interests which would be affected by the proposed suspension of this law, and that in his judgment was a very material reason why you should not suspend your Standing Orders and in the course of one hour injure those who might have acquired rights under the Act.

There were one or two other points connected with the details of this Bill (if a Bill having but one Section could be said to have any details) on which he desired to say a few words. The Bill, as it now stood, provided that all suits now pending, or which should be instituted before the 1st January 1862, should be tried and determined as if Act XIV of 1859 had not been passed. It would be found, however, that Act XIV of 1859 applied to other matters than suits. It regulated the time within which execution of regular or summary decrees might be taken out, and therefore some special provision ought to be made to meet those cases.

On the whole he was unable to concur in the further proceeding and passing of this Bill.

MR. FORBES said, he should not follow the Honorable Member of Council opposite in his argument in favor of making the law of limitation six years instead of three, because he did not consider that that was the question now before them; but he wished to state

very briefly why it was that the objections which he had to this Bill, when it was brought in last Saturday, had increased rather than diminished during the time he had had to consider it and from the opportunity he had had of comparing the Bill with the Petition from which it avowedly originated. At the first reading of the Bill he understood that it was brought in to afford relief to parties who represented that they had been taken by surprise at suddenly finding that the time within which they could bring suits for debts would expire in a few days, and who therefore prayed that the limit fixed by the law might be extended, so that they might have time to bring their suits, and not be exposed to loss through mere ignorance of the law. He (Mr. Forbes) thought that the demand was not one that the Council ought to accede to, or that asserted ignorance of the law, when the fullest facilities for becoming acquainted with it had been afforded, could be admitted as a ground for a postponement of its operation, and that a most inconvenient precedent would be afforded if they once admitted the principle. But on reading the Petition after it had been printed, he found that a postponement of the operation of the law on account of ignorance of its provisions, was not what the Petitioners asked for, and that what they really asked for was a permanent alteration of the law, so that the law of limitation should be changed from three years to six years. He was quite sure that this misapprehension of the object of the Petition arose from some mistake of his own, and not from any want of full explanation on the part of the Honorable and learned Chief Justice; but still, now that he was correctly informed of the true object of the Petition, he could not avoid expressing some surprise at finding how entirely different was the object of the Bill which was founded upon it. The Petition asked that the existing law should be changed. The Bill made no change in the law whatever. In fact, the Petition asked for what the Bill did not give, and the Bill gave what the Petition did not ask for. Now, why should they postpone the operation of a law which, with perhaps the simple exception of the Penal Code, was passed with more deliberation than any other law which had been before the Council, which was introduced by Sir James Colvile, and passed with the assent of the present Honorable and learned Chief Justice and the Honorable and learned Judge opposite after long and protracted discussion, and after being twice published to the world without drawing forth any objection? Why, he said, should they postpone the operation of such a law when nobody asked them to do so? It might be right that the law of limitation should be enlarged from three years to six years, but that was not the question now before them. He (Mr. Forbes) for his own part did not think that it would be well to enlarge it, and he had always heard those competent to give an opinion, admit that Act XIV of 1859 was one of the best Acts that the Council had passed. But, as he said before, that question was not before them. This Bill did not propose to enlarge the law. It only proposed to postpone its operation; and if on no other ground than that nobody had asked for the postponement, and, as far as they now knew, nobody wished for it, he should vote in favor of the Motion of his Honorable friend the Member for the North-Western Provinces in the hope of throwing out the Bill. If any Bill were hereafter brought in, founded on the present Petition, and enlarging the law of limitation, that Bill could be discussed on its merits; but no such measure was now before them, and he objected to a postponement of the operation of a good law when no ground for postponement was shown.

SIR BARTLE FRERE said, he thought that the Honorable gentleman who had spoken against the Bill had somewhat misunderstood the object of the Petitioners and of the Bill before the Council. It might be true that the Petition went at some length into the question of what ought to be the law of limitation, but it seemed to him the main object of the Petitioners was

contained in the first paragraph which was as follows:—

"That your Petitioners have only *recently* ascertained that Act XIV of 1859 is one liable seriously to affect the interests of Traders and others."

This was the point which made it necessary that we should take notice of this Petition. Had they asked merely for an alteration of the law as it now stood, he thought that the arguments which had been used by the Honorable Members for Bengal, Madras, and the North-Western Provinces, should induce us not to act hastily in altering the law passed two years ago. But what the Petitioners said was virtually this—"You have enacted a law which makes a considerable change in the period of limitation for the institution of suits to recover our debts, and we have only lately found it out." It was perfectly true that everybody was supposed to know the law, and that very ample notice had been given in this case. The alteration might have been known two years ago. But there was such a thing as giving too much notice; and from what was read by the Honorable Member for the North-Western Provinces, it appeared that this Act had been on the anvil for no less than twenty years before it was passed, that three or four years elapsed between its introduction into this Council and its passing, and that two years had been allowed before it came into operation. Now, certainly, all this notice was long enough. But it might reasonably be doubted whether it was not too long—so long, in fact, as to defeat the object of giving notice, and thus prevent people from being prepared for the Act when it actually came into operation. It was said, and it was perfectly true, that every means had been taken to make this Act public; but he would ask, were those means effectual? As stated by his Honorable friend opposite (Mr. Laing), it was not a question of abstract legal principle or vested right; but it was a mere question of commercial convenience and expediency. The Petitioners had represented that they had been taken by surprise, and he entirely believed them. Not only was this the case with the gentlemen who signed the Petition, but he was aware of other parties who were equally in the dark up to an equally late period. His Honorable friend the Member for the North-Western Provinces had observed that no Petition had come up from other parts of the country. But if other parts of the country had been in the same state of ignorance, we had not had time to hear from them.

Then his Honorable friend referred to the Bill for the amendment of the Rent law. That was not a case in point. The blot was not discovered till after the law came into force, and the course now proposed by the Honorable and learned Vice-President was the course and the only course which could be adopted, to prevent the necessity of our having to take the very inconvenient course we had been obliged to follow to rectify the error in Act X of 1859. This Act, as it stood, would virtually cut off the claims of a great number of people who did not know till lately that the Act would affect them.

MR. FORBES asked the Honorable Member to read the part of the Petition which stated so.

SIR BARTLE FRERE again read the first paragraph of the Petition, and went on to observe that the Petitions which had been read at the table to-night were precisely to the same effect.

MR. HARINGTON remarked that the prayer of the Petition of the Trades' Association was not to that effect.

SIR BARTLE FRERE resumed. The prayer of the Petition had been rightly described by his Honorable friend, but there were reasons why we should not hastily accede to such a prayer. There was no reason why, having delayed the operation of this Act for the past twenty years, we should not defer it a few months longer. But there were reasons why we should not hastily interfere with a material part of a law in the construction of which so much care and consideration had been bestowed. There was but one course open to the Honor-

able and learned Vice-President by which he could afford relief against the apprehended evil without causing loss or injustice to any one, and that course he took, namely to propose that the operation of the Act be put off a few months longer to give the parties time to take the necessary steps for the recovery of their claims. It appeared to him quite inconsistent with any sound principle of legislation to have acted hastily on any application to alter the terms of limitation. But this Bill did not alter the terms of limitation but simply postponed the new terms prescribed by the Act for a few months.

Then the Honorable Member for the North-Western Provinces observed that it would be "hard" on the parties who had relied on the Act coming into force, if we passed this Bill. He (Sir Bartle Frere) did not know whether he meant that it would be hard on the debtor or creditor. Suppose the debtor, under the belief that the Act would come into operation in a few days, and under the pressure applied in consequence by his creditor, had paid his debt sooner than would have been necessary if no alteration in the law took place, he (Sir Bartle Frere) did not think that that could be called a hardship on the debtor; nor did it appear to be a hardship upon the creditor if he were obliged to enforce payment sooner than would have been necessary if he had known we meant to pass this Bill. But the main argument which would have weighed with him, and to which the Honorable gentleman opposite (Mr. Sconce) had alluded, was that the Bill would shake the confidence with which the proceedings of the Council would be regarded by the public. He would ask his Honorable friend whether he thought we would do anything to lose public confidence when a large commercial body came forward and said that they did not know until recently of laws passed by us two years ago. Should we lose public confidence by attending to what they told us and by deferring for a few months the operation of the law; or were we more likely to lose public confidence by shutting our ears to what was a just complaint, and allowing the law to come into operation by surprise? He did not think the gentlemen who had signed the Petition were bound by the opinion given by the Association twenty years ago. The Association, as it was now constituted, was quite changed; he hoped that the gentlemen who signed the letter which had been read by the Honorable Member for the North-Western Provinces had made their fortunes and gone home long ago; and he doubted if any of them were now members of the same body. For these reasons he should vote in favor of the Bill, and he did not think that we should in any way lose public confidence by suspending the operation of the Act.

THE CHAIRMAN said, he thought that the Honorable Members who had opposed the proceeding of this Bill had been so clearly answered that, if he had not been the originator of the Bill, he should not have felt it necessary to say a single word on the subject. One of the objections urged by the Honorable Member for the North-Western Provinces was, that in a case of this kind, we ought not to act hastily, but with deliberation and care, in the same manner as we had done with regard to the Bill brought in by the Honorable Member for Bengal, to alter the law of limitation in Act X of 1859. If he really believed that Act XIV of 1859 had not been properly understood by the public in general, there could be no hardship, he thought, in postponing its operation until the 1st of January next, to admit of their attention being fully called to it. The Petitioners had represented that their attention had only lately been called to the fact that the Act would materially affect their interests; and he might mention that he had only this morning heard from the Solicitor to the Trades' Association, that he was not employed to call the attention of the Association to the Acts passed by this Council. The gentleman had also put into his hands a copy of the bye-laws of the Association, from which it certainly appeared that that was no part of his duty; and he had assured him that, not only was he till very

lately not aware of the existence of the Act, but the greater part of the Members of the Association also were equally ignorant of it as himself. Now what was the object of that Act? Before the Act was passed, any person having claims for goods sold, might bring his suit in a Supreme Court within six years, or in a Mofussil Court within twelve years. But this Act reduced the period of limitation to three years. Now suppose any person had sold goods in May 1858; if the Act had not been passed, he would have had three years more to bring his action in the Supreme Court, and nine years in the Mofussil. By this Act, however, if it were to come into operation on the 5th May next, he might be barred altogether of any remedy to recover his debt. Admitting that the gentlemen who had signed the Petition ought to have been aware of the Act, and that they had been very careless and negligent in not having read the Gazette and made themselves acquainted with the law, he thought it would be extremely hard, if, believing that they were really ignorant of it, we were to confiscate their claims and leave them remediless if they did not bring their actions before the 5th of May next. He understood that some tradesmen in Calcutta had outstanding debts to the amount of upwards of a lakh and a half, and it would be very hard that those gentlemen who did not bring their actions before the 5th of May should be deprived of their remedy to recover their claims if their debtors were not honest enough to pay them. He therefore thought it right to postpone the Act, and to give them full and ample opportunity to become acquainted with the Act.

Now the Honorable Member for the North-Western Provinces had said that we should go through the deliberative process, as we had not been asked to suspend, but to alter the Act. If that had been the case, a great deal of what the Honorable gentleman had so forcibly urged might have been applicable.

MR. HARINGTON observed, that was the prayer of the Petition.

The Chairman

THE CHAIRMAN. He was coming to that. But the fact was that we were merely suspending the Act to give the gentlemen the opportunity of communicating with their debtors. Now the Honorable gentleman had asked, what was more usual than to keep a debt alive, by getting a letter of acknowledgment from the debtor? But the tradespeople in Calcutta who had debts owing to them by parties residing in the Mofussil, would be barred altogether after the 5th of May. What opportunity would they have to communicate with their debtors in the Upper Provinces, the Punjab, and elsewhere? Therefore they had no alternative but to go to their lawyers for the purpose of instituting their actions, and the costs of action would eventually have to be paid by the unfortunate debtors. Why should we do that, and not give them time to write to their debtors that, if they did not pay in a short time, or acknowledge their debt, they (the tradesmen) would be driven to the necessity of suing them. He presumed that that was what most tradesmen would do. He had no doubt that tradesmen, like D. Wilson and Co. for instance, would be very sorry to be obliged to put a debtor to the expense of an action in the Supreme Court. He thought it would be better if they were allowed the opportunity of communicating with their debtors, and getting an acknowledgment in writing from them before the 1st of January 1862. He did not see what hardship there could be in giving them that opportunity, nor did he think that the dignity of the Council would be compromised by such a course.

Then it was said, that the Petitioners did not ask for a suspension but for an amendment of the Act. Because the Petitioners had asked us to change the period of limitation in the case of trade-debts from three to six years, was that any reason why we could not do anything else? We were not prepared at present to give them six years, and were we therefore to tell them "As you have not asked us to suspend the law, we will not do so?" He thought that it would not only be very undignified of

the Council, but that the Council would not be performing their duty honestly to the public, if it refused to give creditors time to communicate with their debtors in such a case as this. He had brought in this Bill, not to the extent of what the Petitioners had asked us, but because his attention had been called to the fact that gentlemen living in Calcutta and in the vicinity of the Legislative Council, were not aware of the existence of such a law. Probably there were several gentlemen in the interior of the country who were in the same position. We, who sat here as legislators, did not wait to be asked to do what was right. If we found that a law was about to come into operation before the people were acquainted with it, and if that fact had been brought to his notice, he should not have waited for a Petition, but should have acted on his knowledge, so that no man might have a right to complain of our having acted unjustly.

Then the Honorable Member for Bengal had said that, by passing this Bill, we should injure the rights of those gentlemen who claimed under pre-emption. They formerly had twelve years, and we had cut them down to one year, and therefore we had created for them a title of which we should be depriving them. The object of the Act, however, was to prevent their having that title.

MR. SCONCE said, he had spoken of the party who purchased, and not the party who claimed under pre-emption as against the purchaser.

THE CHAIRMAN. But this Act was to enforce the right of pre-emption against a purchaser. The claimant to the right of pre-emption had henceforth to bring his suit to enforce his claim within a shorter time instead of a longer. Well, the holder at present, prior to the 1st of May, held under the old law. He had acquired no right yet, and our object was to prevent his acquiring a right under an Act of which the other party might be ignorant. We did not want to let the man have a right, by allowing the Act to come into force, and afterwards altering it. In that case he would have reason to say, "I have got my right, and you are going to interfere with it *ex post facto.*" By passing this Bill, however, we should be telling the party, "We will not let you have a right, in consequence of the ignorance of the other party," which we could not do if the deliberative process advocated by the Honorable Member for the North-Western Provinces were to be gone through. On the other hand, supposing this Bill were not passed, and the deliberative process were gone through, as in the case of the Bill to amend the law of limitation in the Rents Act, was the Honorable Member for Bengal prepared to support the introduction of a Clause similar to Section II of the latter Bill, which provided that—

"Any suit or appeal instituted under Act X of 1859, which may have been dismissed or rejected on the ground that the suit had not been commenced within the period prescribed in Section XXX of the said Act, may be revived, if the order of dismissal or rejection shall be contrary to the provisions of the foregoing Section, and a Petition for the revival of the same shall be presented within four months" &c ?

Now, the Honorable Member for Bengal—and he (the Chairman) regretted to say so—would not be amongst us after to-day. We all admired his great ability and zeal and the independence with which he had conducted himself during the time he had sat amongst us, and we all regretted that we were about to lose his assistance. But he would ask the Honorable gentleman before he left the Council, to say, when we were hereafter inundated with Petitions from those who had lost their debts, because they thought they had six years to recover them instead of three, what we should do on that occasion, if the present Bill were thrown out? He thought in such a case he should be obliged to decide against the parties to have the suits revived, telling them that, as the opposite party had gained a right, we could not give them any relief. To prevent placing ourselves in that position, he proposed to avoid going through the deliberative process, and to prevent creditors from instituting suits

against their debtors and putting them to all the expense of an action in the Supreme Court. He had no doubt that hundreds of such suits would be instituted in the Supreme Court in the next three or four days. Creditors must either do that or lose their debts altogether. Why should we drive them to that alternative? Let us act as straightforward and honest men. When we found that an Act passed by us had not been generally understood, and was likely to be injurious, should we wait until we were asked to do justice, or should we do it of our own accord? His view was this.—Before a law came into force, it was his duty to see that no injustice would be done by it. It was upon that ground that we postponed the operation of the Penal Code, because it had not been translated into all the languages of the country, and would be binding on persons who might not have known that they were committing offences under it, and would not be understood by the Judges who would have to administer it. But we were not inundated with Petitions from all parts of the country on that occasion. He believed that we should be doing injustice if we allowed the Code to come into force under those circumstances, and therefore without waiting for any Petition, he brought in a Bill to postpone the operation of the Code to the 1st of January next. He did not know that Act XIV of 1859 would act unjustly until the Honorable Member (Sir Bartle Frere) called his attention to it. The Honorable gentleman was kind enough to send him a copy of the Petition which he had received from the Trades' Association, and he (the Chairman) suggested to him the advisableness of postponing the operation of the law altogether, rather than let injustice be done by allowing the law to come into operation immediately. The Petition, therefore, merely called his attention to the fact. It was not because the Petitioners asked, that he did the particular thing they asked for, but he did it in the belief that, if there were persons in Calcutta who were not aware of the existence of the Act, there might be persons out of Calcutta, who most probably were equally ignorant of it. Now this was a law which did not affect the Trades' Association alone. It would affect all persons engaged in trade throughout the country.

For these reasons he thought it right to press on the Bill, and he hoped that the Council, after taking the whole matter into consideration, would agree with him that, in passing the Bill, they would be only doing what was just and proper, and that they might well overlook what had been said about their losing the confidence of the public. He thought we should rather gain than lose the confidence of the public, when they saw that we were not neglectful of their interests, and that we were the first to relieve them from the hardship to which they would otherwise have been exposed.

Then the Honorable Member for the North-Western Provinces had said that persons had been put to expense in buying stamps to bring in their actions. But these persons had brought their actions, and this Act could not prevent that.

MR. HARINGTON—And the opposite party?

THE CHAIRMAN said, he did not look at all to the opposite party claiming to be off his debt under a law of limitation. The only thing was that some gentlemen might have lost their receipts. He thought that if the debtor, believing that the creditor would be barred if his action were not brought within three years, tore up his receipts, then it would be hard. But he did not believe that any gentleman had torn up his receipts, in consequence of the passing of Act XIV of 1859. If there were any such gentleman, he was glad to say that there was a law in force which would protect them on their coming forward and giving their own evidence to prove payment. Therefore they would not be injured, merely because they had lost their receipts; and he thought on the whole, that it would be better to pass this Bill, which would do no harm, but which might protect several parties.

The question being put, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Mr. Laing.
	Sir B. Frere.
	The Chairman.

So the Motion was negatived, and the Section was ultimately passed as it stood.

THE CHAIRMAN then moved the addition of the following Section :—

"Sections XIX, XX, XXI, XXII, and XXIII of the said Act shall not take effect, or have any operation before the said 1st day of January 1862."

Agreed to.

The Title was passed as it stood, and the Council having resumed its sitting, the Bill was reported.

THE VICE-PRESIDENT moved that the Bill be read a third time and passed.

MR. HARINGTON said, he did not propose to occupy the time of the Council at this late hour by stating at length his reasons for refusing to give his assent to the Motion for the third reading of this Bill. He regarded the Bill as altogether uncalled for by the country at large. The Honorable Member of Government opposite (Mr. Laing), in some of the remarks which fell from him, seemed to have treated the Bill very much as if its operation would be confined chiefly to Calcutta; but the Bill was not merely a Calcutta Bill; it would affect the whole country, and looking upon it as a one-sided Bill and as calculated to cause immense confusion and to be the means of inflicting a very large amount of injustice, he felt that he could not properly be a party to the passing of the Bill. He should, therefore, say 'no' to the present Motion.

The question being put, the Council divided—

Ayes 6.	*Noes* 2.
Sir C. Jackson.	Mr. Forbes.
Mr. Erskine.	Mr. Harington.
Mr. Sconce.	
Mr. Laing.	
Sir B. Frere.	
The Vice-President.	

So the Motion was carried, and the Bill read a third time.

THE VICE-PRESIDENT moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

The Council adjourned, till Saturday, the 4th May, at 11 o'clock.

Saturday, May 4, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	C. J. Erskine, Esq., and
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.
H. B. Harington, Esq.,	

LIMITATION OF SUITS.

THE VICE-PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits.)"

BREACH OF CONTRACT.

THE CLERK reported to the Council that he had certified under Standing Order No. 27, that he doubted the authenticity of the signatures attached to two Petitions from ryots of Nuddea against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

THE CLERK presented to the Council a Petition from certain ryots of Beerbhoom against the same Bill.

SIR BARTLE FRERE moved that the above Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK also presented to the Council four Petitions from certain ryots of Moorshedabad against the same Bill.

SIR BARTLE FRERE moved that the above Petitions be printed and referred to the Select Committee on the Bill.

Agreed to.

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Bengal Government, relative to Section 162 of the Bill "for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARINGTON said, he proposed, when the Council went into Committee on the Bill and came to the Section to which the communication from the Bengal Government related, to move that that communication be read at the table.

COURTS OF REQUESTS (STRAITS SETTLEMENT.)

MR. FORBES moved the first reading of a Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca." He said, he should occupy but very little time in introducing to the Council the Bill of which he had given notice. The increasing business in the Courts of the Recorders in the Straits Settlement had rendered it necessary that some relief should be afforded; and at the Sessions lately held at Singapore the Grand Jury, in a presentment, recommended the appointment of an additional Judge. In forwarding the presentment to the Government, His Honor the Recorder said that the business on the common law side of the Court was amply sufficient to occupy the attention of one Judge, while in addition thereto was the admiralty, ecclesiastical, and miscellaneous business, besides the criminal work at the Sessions at both Malacca and Singapore. The Governor of the Straits Settlement had recommended on a former occasion that the Supreme Court should be relieved by an extension of the jurisdiction of the Courts of Requests, and he had now repeated this recommendation in sending up the Recorder's letter with the presentment of the Grand Jury. The Government of India were of opinion that this extension of the jurisdiction of the Courts of Requests would afford the best and readiest means of giving relief to the Supreme Court, and it was at their request that the present Bill had been prepared. It proposed to enlarge the jurisdiction of the Courts of Requests from thirty-two dollars to a hundred dollars or from sixty-four to two hundred rupees, and one short Section embodied all the change that was proposed.

The Bill was read a first time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 90 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after the above :—

"In any case in which there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose district the warrant is to be executed, will prevent the discovery of the thing for which search is to be made, the Police officer charged with the execution of the search warrant, may execute the same in any place beyond the jurisdiction of the Magistrate by whom it was issued without the endorsement of the Magistrate in whose jurisdiction that place is situate. If the thing for which search is made is found in such place, it shall be immediately taken before the Magistrate in whose jurisdiction it is found, and who, unless there be good cause to the contrary, shall make an order authorizing it to be taken to the Magistrate who issued the warrant."

Agreed to.

MR. FORBES moved the introduction of the following new Section after the above :—

"If the thing searched for be found within the local limits of a Supreme Court of Judicature, it shall be taken to the Chief Commis-

sioner of Police or to a Police Magistrate, who sha llact in the manner prescribed in the last preceding Section."

Agreed to.

MR. HARINGTON moved the omission of Section 91 (providing in what case a Magistrate might grant a search warrant out of his jurisdiction), and the substitution of the two following Sections :—

"In any case in which it may appear necessary, a Magistrate may by the warrant order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made. When a Magistrate issues a warrant under this Section, he shall inform the Magistrate within whose jurisdiction the house or place to be searched is situate, or if the house or place be situate within the local limits of any Supreme Court of Judicature, he shall inform the Chief Commissioner of Police of the issue of such warrant.

It shall be competent to a Magistrate issuing a warrant for the search of any house or place out of the jurisdiction of the Magistrate of the District, to direct the warrant to the Magistrate of the District, in which such house or place is situate, and to transmit the same by post. On receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on the warrant, and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the warrant is to be executed within the local limits of any Supreme Court of Judicature, it shall be addressed to the Chief Commissioner of Police or to a Police Magistrate. In such case any property found on search made, may be dealt with as provided in Sections 90 and 90*a*."

Agreed to.

The postponed Section 97 was passed after some amendments.

Section 103 was passed after an amendment.

MR. HARINGTON moved the introduction of the following new Section after the above :—

"Nothing in the last preceding Section shall be held to interfere with the exercise of any powers which are vested in a Police Officer by any special or local law or with the performance of any duty which is imposed upon a Police Officer by any such special or local law."

Agreed to.

Section 104 (requiring the officer in charge of a Police Station, upon complaint preferred, to proceed in person or depute a subordinate officer to make the enquiry) was passed with the addition of the following words, on the motion of Mr. Erskine :—

"Any Magistrate on receiving intimation of the commission of any such offence, may at once proceed, or depute an officer exercising any of the powers of a Magistrate, to proceed to hold a preliminary enquiry into, or otherwise to dispose of such case, in the manner provided in this Act."

Section 105 was passed as it stood.

Section 124 was transposed so as to stand after Section 105.

Section 106 was passed as it stood.

Section 107 was passed after the addition of the words "in such form as shall be from time to time prescribed by the local Government."

Sections 108 to 111 were passed as they stood.

Sections 112 and 113 were passed after amendments.

Sections 114 to 118 were passed as they stood.

Section 119 was passed after a verbal amendment.

Section 120 was passed after the reduction of the maximum period for which an accused person might be detained by the Police without the special order of a Magistrate, from 48 to 24 hours.

Section 121 was passed as it stood.

Section 122 provided as follows :—

"A Police officer making an enquiry under this Chapter, shall day by day record his proceedings by way of diary setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a statement of the circumstances elicited by his enquiry, and shall forward day by day a copy of such record to the Magistrate having jurisdiction in the case so investigated."

After some verbal amendments, on the Motion of the Chairman—

MR. FORBES moved the omission of the words "Magistrate having jurisdiction in the case so investigated" at the end of the Section,

and the substitution of the following words :—

"District Superintendent of Police, and it shall be the duty of such officer to bring to the notice of the Magistrate of the District any part of such diary which he shall consider it to be important that such Magistrate shall know. The Magistrate of the District shall be entitled to call for and inspect such diary. In cases where there is no District Superintendent of Police, the Police Officer shall forward day by day a copy of the diary to the Magistrate of the District. Such diary shall not be evidence of the facts stated therein except against the Police Officer who made it."

The Motion was carried, and the Section as amended then passed.

Section 123 was passed after amendments.

Sections 125 to 128 were passed as they stood.

Section 129 was passed after a verbal amendment.

Sections 130 and 131 were passed as they stood.

The Council adjourned for 10 minutes.

POLICE.

MR. HARINGTON said, before they proceeded with the consideration of the Code of Criminal Procedure, he wished, now that they had settled what might be called the Police Chapters of the Code, again to call the attention of the Council to the state of the Police in the North-Western Provinces, to which he had alluded on a former occasion. In the North-Western Provinces a new Police Force had been organized, or was in course of organization, in accordance with the Act lately passed by the Council; but the Police appointed to this Force could not be enrolled in the manner laid down in the Act, because, from the time that they were enrolled, they would have no law for their guidance in taking cognizance of and making a preliminary enquiry into criminal offences, it being expressly provided by Section XX of Act V of the current year, that "Police Officers enrolled under that Act should not exercise any authority except the authority provided for a Police Officer under the Act, and any Act which should hereafter be passed for regulating Criminal Procedure." The only course, therefore, open to the authorities in the North-Western Provinces was for the present not to enrol the new Police, but this course was open to the objection that it obliged the members of the new Police Force to regulate their proceedings by the old, or, he should more correctly say, the existing Regulations which it was the object of the Code of Criminal Procedure, on the revision of which they were now engaged, to supersede altogether. This was a state of things which it was not desirable to continue: and he had been considering how the want of a proper law for the guidance of the Police, which was so much felt in the North-Western Provinces, could be best and most speedily supplied. Now that they had settled in a Committee of the whole Council the Chapters of the new Code relating to Police Procedure, it seemed to him that they could not do better than embody those Chapters in a separate Bill and pass it at once. He had framed a Bill accordingly, and he would now ask the Council to suspend the Standing Orders, and to allow the Bill to be read a first and second time to-day. If this were permitted, he would have the Bill printed and circulated in the early part of next week, and he would ask the Council to pass it through its remaining stages at the next meeting of the Council. In the Bill prepared by him he had copied the Police Sections word for word from the Code of Criminal Procedure, as they had been finally settled by the Committee of the whole Council; but as the Schedule appended to the Code of Criminal Procedure was based on the Indian Penal Code which would not take effect until the 1st January next, he had prepared a Schedule of offences for the Bill he was desirous of introducing. He had taken the offences contained in this Schedule from the existing Regulations, and had designated them as they were designated therein. With these remarks he begged to move that the Standing Orders be suspended.

MR. FORBES seconded the Motion, which was then put and carried, and the Bill was read a first and second time on the motion of Mr. Harington.

CRIMINAL PROCEDURE.

The adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

Sections 132 and 133 were passed after amendments.

Sections 134 to 137 were passed as they stood.

Section 138 was passed after amendments.

Sections 139 and 140 were passed as they stood.

Section 141 was passed after amendments.

After two verbal amendments in Section 142, the consideration of that and the following Section was postponed.

Sections 144 and 145 were passed as they stood.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Adjourned Committee of the whole Council on the Bill "to remove certain tracts of Country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "for the levy of Port-dues in the Ports of the Concan."

Adoption of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)," and suspension of the Standing Orders in order that the Bill may be passed through its subsequent stages.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that the communication from the Bengal Government which was this day reported, relative to Section 162 of the Criminal Procedure Bill, be printed.

Agreed to.

The Council adjourned.

Saturday, May 11, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

The Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq., and
H. B. Harington, Esq.,	The Hon'ble Sir C. R. M. Jackson.
H. Forbes, Esq.,	

In consequence of the indisposition of Mr. Laing and Sir Robert Napier, the Council was adjourned, on the Motion of Sir Bartle Frere, till Saturday, the 18th instant, at 11 o'clock, the Members assembled not forming the quorum required by law for a Meeting of the Council for the purpose of making laws.

Saturday, May 18, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

NEW MEMBER.

THE CLERK reported to the Council that he had received a letter from the Bengal Government, intimating that the Lieutenant-Governor had nominated Mr. Seton-Karr to be a Member of the Legislative Council.

MR. SETON-KARR was duly sworn and took his seat.

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from Russickloll Ghose, praying for certain amendments in Act XIV of 1859 "to provide for the limitation of suits."

THE VICE-PRESIDENT moved that the Petition be printed.

Agreed to.

AMALGAMATION OF SUDDER AND SUPREME COURTS.

THE CLERK presented a Petition from certain Enamdars, Merchants, and other Native Inhabitants of the Zillah of the Northern Konkan, in the Bombay Presidency; and reported that he had certified on the back of the Petition that it was not framed in conformity to the 22nd Standing Order, forasmuch as it did not relate to any matter connected with the business of the Council.

MR. ERSKINE said, he understood that this was a Petition relating to the proposed Act for the Amalgamation of the Sudder and Supreme Courts, and that it was very similar to a Petition on the same subject which had been forwarded to him not long ago. He had explained to the writers of the former Petition that this was not a matter connected with any business before the Council; and with the consent of the Petitioners had transferred the Petition to the Supreme Government for disposal. It appeared to him that the same course should be pursued with this Petition, and he should therefore move that the Clerk of the Council be requested to transfer it to the Secretary to the Government of India.

Agreed to.

PARSEES.

THE CLERK presented a Petition from certain Parsee Inhabitants of Bombay, praying that the draft Code of laws sent up by the Parsees of Bombay be not adopted.

Also a Petition of Ferozbhoye, wife of Ardaseer Cursetjee and daughter of the late Framjee Cowasjee, praying for the passing of an Act granting to the Supreme Court power to exercise ecclesiastical, as well as criminal, jurisdiction over the Parsees in matrimonial and other cases.

MR. ERSKINE moved that these Petitions be referred to the Select Committee on the subject to which they related.

Agreed to.

TRANSPORTATION AND PRISON DISCIPLINE.

THE CLERK reported to the Council that he had received a communication from the Home Department forwarding the opinion of the Advocate-General calling attention to the present anomalous state of the law according to which no milder punishment than death can be passed for the offence of escaping from transportation, and pointing out the necessity of a law to enable the Executive Government to frame rules for prison discipline as regards convicts sentenced to imprisonment only, or convicts who, though sentenced to transportation or penal servitude, have not been removed to their final place of destination.

THE VICE-PRESIDENT moved that this communication be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported that he had received a communication from the Military Department suggesting for consideration, in connection with the Bill to amend the Articles of War for the Native Army, that recruits, before being sworn in, should have Article 47 (requiring Sepoys in the field to aid in the construction of field works) read to them in addition to other articles already directed to be read to them.

SIR BARTLE FRERE moved that this communication be printed.

Agreed to.

CATTLE TRESPASS.

THE CLERK reported that he had received a communication from the Bengal Government relative to an amendment of Act III of 1857 (relating to trespasses by cattle).

MR. HARINGTON moved that this communication be printed and referred to the Select Committee on the Bill which had been brought in to amend that Act.

Agreed to.

SUGAR DUTY (NORTH-WESTERN PROVINCES).

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

ARTICLES OF WAR (NATIVE ARMY).

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

CIVIL PROCEDURE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

CONSOLIDATED CUSTOMS BILL.

MR. ERSKINE moved the first reading of a Bill for the consolidation and amendment of the laws relating to the collection of Customs Duties. He said that it was a source of regret to him that the duty of introducing this Bill to the Council should not have been entrusted to some one who was more familiar than he could profess to be with the internal working and management of the Departments of Customs in the different Presidencies in this country. The Bill, as Honorable Members would perceive, was a very extensive one, and it referred to a great variety of minute details in connection with which it would have been satisfactory that there should be some one at hand to furnish information and explanations on each point as it arose with more authority than he could hope to do. As, however, this did not seem to be practicable, it had been a consolation to him to reflect that the draft of this Bill had been prepared by a Committee of gentlemen who were fully cognizant, not only of the views and requirements of the chief officers in the service of Government in this Department, but also of the mercantile community—and of that community not merely in any one place, but, at all events, in the two greatest centres of commercial activity on the opposite sides of India. He trusted, therefore, that the draft had been so maturely considered, that any defects in the manner of its introduction now would be of comparatively little importance. Perhaps he might most readily enable Honorable Members to apprehend to some extent the duty which had been imposed on the framers of this Bill, and the work which they had accomplished, by calling attention in a summary way to some of the circumstances which led to the appointment last year of a General Customs Committee and to the preparation of the measure now before them. Just two years ago an Act had been passed to amend the rates of Customs Duties leviable on articles imported and exported at British Indian Ports. That Act did not contain in itself any detailed Tariff of fixed valuations for duty, nor did it provide for any alterations in the executive management of the Customs Department. But reasons similar to those which led to the preparation of that enactment seemed to have led at the same time to a general reconsideration of the questions connected with the department, and much correspondence and discussion ensued. To this it was not necessary to allude farther than by noticing that a rather elaborate report relative to the then anticipated revision of the Tariff of valuations had been made by the Calcutta Chamber of Commerce towards the end of the same year, and just about the time at which the late Mr. Wilson arrived in the country. His attention, of course, was, without loss of time, devoted to these subjects, and in the months of February and March following he carried through the Council a Bill by which the rates of Customs Duties were again considerably altered and amended. Very soon after the passing of that Act, a revised Tariff of valuations for Duty was like-

wise published. It was put in force at once on this side of India, and was referred to the other Presidencies in order to its uniform adoption throughout the country if that were judged to be practicable. The publication of this Tariff gave rise, as was well known, to renewed representations, here and elsewhere—and in due time the Bombay Government intimated that, although they fully appreciated the benefits to be expected from the adoption of a uniform Tariff for India, they were of opinion that the one adopted in Bengal must be materially modified before its application could be made universal. Under these circumstances the Government of India resolved to assemble a general Customs Committee in which the other Presidencies should be represented as well as Bengal, and in which the mercantile community should be represented as well as the official departments under the Government. The Government of Madras, and the Chamber of Commerce there, did not deem it necessary to depute special representatives to this Committee. The Commissioner of Customs, Mr. Spooner, appeared from Bombay as the representative, not only of that Government but also of the commercial community there, who had expressed entire confidence in his ability and judgment. In Bengal, Mr. Eden, one of the Secretaries of the Board of Revenue, was named on behalf of the Government, and the Chamber of Commerce named their own President, Mr. Bullen. To the Committee thus constituted were entrusted several very important duties. They were to revise the Tariff already referred to, in order to its adaptation to the whole of India; they were to advise the Government in regard to some questions relating to the administration of the Customs Department in regard to which discussions had taken place; they were to frame forms of uniform Trade and Navigation Returns for the whole empire, for periodical publication; and they were to prepare the draft of a Bill to consolidate the laws relating to the Customs Department in all the Presidencies. To the manner in which the Committee had performed most of these duties it would be out of place to allude, farther than to observe that their proposals and performances seemed to have secured for them not only the hearty thanks of Government but the general approval of those who were more specially interested in, and conversant with, the subjects with which they had to deal. In regard to the Committee's draft of a Consolidated Customs Act, however, it would be necessary to speak somewhat more in detail. The plan of a consolidation of the Customs Laws applicable to the Presidency of Bengal had, he (Mr. Erskine) believed, been in contemplation for some considerable time. But he was not aware that any formal design for a general consolidation of these Laws for the whole of India had been entertained before the arrival of Mr. Wilson in the country. In that supposition he might be mistaken, but, at all events, if this measure did not originate with Mr. Wilson, he had adopted it at a very early period. He alluded expressly to it during the discussions on the Customs Bill which he carried through the Council last spring. On that occasion the Honorable Member for the North-Western Provinces suggested a provision relative to the incidence of duties, in cases of contracts to deliver goods, duty-paid, when an enhancement of duties was enforced between the date of the contract and the date of delivery. Mr. Wilson then observed that such a provision might be more appropriately considered in connection with a Bill for the consolidation of the Customs Laws throughout India, which, as he stated, was under consideration by the Government. And, indeed, no one who remembered the circumstances under which Mr. Wilson arrived in the country, or the views on this particular subject which he had expressed some years before he left England, could wonder that he should be a strong advocate for such a consolidation. When he arrived in India, the then recent enhancement of the rates of Duties, followed by an enhancement also of the rates of fixed valuations for duty, and by an increased

strictness of management in some respects in the Customs Houses, had attracted much attention to this department and given rise to much discussion. At the same time he (Mr. Wilson) was engaged in a searching enquiry into the working of all the great departments which ministered to the public revenue, and with a view, no doubt, to the introduction into each, as far as possible, of a more uniform and concentrated management. He must have felt how convenient it would be for the Government, when they had once referred to several Regulations in order to settle some question of Customs management in one Province, to be saved from the necessity of repeating the process, perhaps more than once, in connection with very similar questions if they should arise in any other Province where the Regulations were different. He must have felt how convenient it would be for a mercantile man to be assured that, when he had made himself familiar with the system which was at work in his own immediate neighborhood and under his own eyes, he had thereby made himself familiar also with the system which would meet him at every port in British India with which he might have transactions. He must have felt, too, how almost indispensable such uniformity of laws would be if there were any likelihood of the introduction into this department of a more professional agency—of a class of officers more specially trained to its peculiar duties, and enlisted, so to speak, for general service in all the Presidencies indiscriminately. And, indeed, no one could more clearly or strongly express approval of a thorough consolidation of all regulations for Customs management than Mr. Wilson had done in England in 1853. Honorable Members were no doubt aware that in that year he had carried through Parliament the well known English Consolidated Customs Act—and in moving a resolution preliminary to the introduction of that Bill, he had explained in much detail and with great ability his views on the whole subject. After enumerating several measures of reform which the Government of the day proposed to adopt, and noticing seriatim the recommendations of a Parliamentary Committee which had long been sitting, he expressed himself as follows, in respect to a codification of the Customs Laws :—

"The next point to which the Committee refer is that of the codification of the Customs laws. Now perhaps the House is not aware that prior to the year 1825 there existed no fewer than 1500 laws relating to this department; but in that year the number was reduced to six Acts of Parliament. These Acts included every thing relating to management, regulation, smuggling, informations, registry, duty, &c., connected with the Customs Department. The labour was performed by one gentleman; and I now hold in my hand a book which Mr. Huskisson exhibited to the House some twenty-five years ago as the greatest mental effort that had been made for many years. These Acts were classified by James Deacon Hume, Secretary to the Board of Trade; and I believe that no more meritorious work was ever performed by a public servant. The 1500 Acts to which I have referred were all reduced to this small volume; and when Mr. Huskisson held it up, he did so with an air of the greatest triumph. The case of Mr. Hume furnishes a remarkable example of the impolicy of the present regulations with regard to the promotion of the officers employed in the Customs. I think there ought to be no branch of the public service, in which a man may not, sooner or later, by great efforts, look to a more prominent position."

And, after some further allusions to Mr. Hume's character and career, he continued—

"That work having been performed, it was not difficult from time to time to codify the fresh regulations that were made; and in the years 1835 and 1836 they were again codified, under the care of Mr. Poulett Thompson. We have given instructions to the Solicitor to the Customs to reduce these six Acts into one, which shall include every thing that is necessary for the management of the Customs establishment. That gentleman has undertaken the work; and discarding altogether technical terms—using plain, simple language, that no man reading English can misunderstand, arranging the transactions relating to importation and exportation in all their various branches in the simplest order. I hope very shortly to be able to lay on the table that Act, which shall include every existing law and regulation with regard to the Customs management. And after that is done, in order that there may not exist any excuse or ground of complaint, we have instructed the Commissioners every month to publish any new regulations that may be

made, so that they may be included every year in a new Act of Parliament. Every regulation adopted from time to time for the extension of commerce will thus be brought before the public from year to year, so that one single Act of Parliament shall contain the whole of the existing Customs regulations."

Now, without wishing it to be supposed that he (Mr. Erskine) considered that an annual revision and republication of a great Act like that now proposed, could in this country and at this time be prescribed without much public inconvenience, it did appear to him that the principle recognised at the close of this extract—of a periodical revision and reconsolidation, perhaps after three years or five years, of every important Act passed for the codification of any great branch of the law—was one which might hereafter with much advantage be considered by the Council. That, however, was not a question on which he could then dwell ; but it would no doubt be admitted that one who had years ago entertained the views just quoted could hardly be otherwise than an earnest advocate for some measure of the same kind in this country, where the existing regulations were in many repects not only defective, but discordant in different places. There could be no doubt that, if Mr. Wilson had lived until the Committee assembled in the autumn of last year, the Members of it would have derived from his ability and great experience, the most important assistance. Unfortunately, however, they were deprived of this advantage, and were therefore thrown back on their own plans and resources. In these circumstances they had proceeded, he (Mr. Erskine) thought, with much prudence and good judgment. They had collected the principal regulations now in force in this department throughout India. They had collated and compared them carefully. They had thrown out such portions as were obviously inapplicable or antiquated and had retained what was still suitable, with as little alteration as possible even in form. Where alterations were unavoidable, they had been made not in any spirit of theoretical innovation, but as plain practical experience required. Where more important deficiencies were discovered, the Committee had fallen back generally on the English Consolidated Act, from which they had borrowed largely, and occasionally they had legalised some old established and well known rule of practice in the department or some valuable general order of the Government. In this way they had succeeded, he thought, in preparing a draft which, at least, seemed to be a great improvement upon any law hitherto enacted in this country, and which, he trusted, would afford a secure and solid foundation on which to rest further measures of reform hereafter. That this opinion would in a great degree be shared by mercantile men who, more than others, were personally interested in the good management of this department, might perhaps be concluded from the manner in which Mr. Bullen himself had alluded to the labors of this Committee, in addressing the Chamber of Commerce in December last. He was reported to have said on that occasion—

"He was glad that the Tariff which the Committee had prepared had met with such general approval ; he thought it a fair Tariff both to the Government and the importer. The Committee was now engaged in the revision of the Acts and Regulations under which the Customs were administered, and the issue of their labors would be a concise consolidated Code for all India, purged of many unfair and injurious Clauses which were now in force. The Committee had fixed Thursday next for the hearing of all complaints against the existing Custom House system ; and, considering the liberal views which his two colleagues had brought to bear on the consideration of all questions which had come before them, and to which he was glad to have that opportunity of testifying, he had every hope that all grievances which could be substantiated would be remedied."

In this passage Mr. Bullen spoke of the Committee's draft as a Consolidated Code, and a similar expression occurred in the report of the Committee themselves. And no doubt, in one sense, this Bill might be so regarded. At the same time it might be well, in order to avoid any possibility of misconception,

to notice at once that, not only was there here no attempt whatever, no pretence of dealing with the many important questions which would have fallen to be discussed had this been in the nature of a Commercial or Maritime Code, but that this did not even profess to be an exhaustive compilation and consolidation of all existing Regulations which, under more favorable circumstances might have been, and which hereafter might be, included in a law for the administration of the department. Some subjects had for the present been designedly avoided. And on one point the Committee had been specially anxious that there should be no misapprehension; namely, that this was in no respect in the nature of a Tariff Bill, or a Revenue Bill, or a Bill which would affect the public exchequer, except indeed in as far as the efficient and economical management of a great department always must indirectly affect it. In their report to Government the Committee had remarked on this point—

"They think it desirable for many reasons that the laws fixing the rates of duty chargeable upon goods, which are of course intended to be periodically revised, in accordance with the requirements of the State and the condition of Trade, should be entirely distinct from the Code which ought to be drawn up as far as possible with a view to permanency. Keeping this object in view throughout, the Committee have avoided the introduction into the draft of all such forms and tables as are necessarily subject to frequent alteration to suit the circumstances of the trade of different ports. In so doing they have followed the English practice, where the Tariff Act, 16 and 17 Vic. c. 106, is quite distinct from the Consolidated Customs Act 16 and 17 Vic., c. 107, though both became law on the same day."

As regards the materials with which the framers of this Bill had to work, it could not be necessary to say much. Honorable Members were aware that the laws which chiefly regulated the management of the Customs Department were not of very remote antiquity. The older Regulations on this subject, in as far as they had not been long ago formally rescinded, had for the most part long ago become obsolete; and the Acts which were operative in the different Presidencies had been passed from time to time after the introduction of great changes into the system in this country, consequent on the Reforms of 1833-4. After those years, when the system of Inland Customs and Transit Duties was abolished from time to time in different Provinces, enactments were passed for that purpose, and changes were also made in the Regulations of the Department of Sea Customs. The original Acts for Bengal had been passed in 1836-7. The corresponding Act for Bombay had been passed in 1838, but had been superseded by a more complete law which furnished many materials for this Bill. A similar Act for Madras had been passed in 1844. All of these laws were more or less founded on one another—all were more or less like each other—and, in all, there were considerable defects. Indeed, it could be no libel to say that the Act by which it was proposed to supersede them all, was greatly superior to any of them. There was one other point on which he was anxious there should be no mistake. It had seemed to him expedient—more respectful to the Members of the Customs Committee and more likely to be in accordance with the wishes of the Council and of others who might feel an interest in this Bill—that it should be presented to the Council in the first instance exactly in the shape in which it had left the hands of the Committee. He had been careful, therefore, in causing it to be printed, to see that no changes were made except here and there in the way of verbal amendments. He had also directed that references should be given in the margin to the former provisions of law, on which each new provision had been founded. Every one who saw the printed Bill might, therefore, be assured that in each particular he was in possession both of the matured recommendation of the Committee and of the general grounds of it. He trusted at the same time that, when the Bill should be read a second time Honorable Members would freely state any difficulties that occurred to them and any amendments which seemed expedient. He

trusted also that, if the Bill were published for general information, a similar course would be adopted by others, and that they would be favored with opinions on the measure, especially by the experienced servants of Government in the department, and by mercantile men and mercantile bodies, such as the Chambers of Commerce at the different Presidency Towns, who must be in possession of much valuable information, and whose suggestions, he was sure, would be received with thankfulness and considered with every attention. If this were done, he was sanguine that a Select Committee might effect further improvements in this Draft, and that it might be made in every way worthy of adoption by the Council. In one or two particulars the Supreme Government, when they expressed a general approval of the Committee's recommendations, had pointed out that modifications seemed to be expedient, and a few provisions had not altogether commended themselves to his (Mr. Erskine's) own judgment. These doubts chiefly arose in connection with Sections regarding which there had been differences of opinion among the Members of the Committee, or which suggested innovations on the existing practice. And it might be right just to draw attention to some of these points as briefly as possible. The Bill was distributed into nine sub-divisions relating respectively to—Appointment of Officers and Declaration of Ports; Importation; Warehousing; Exportation; Drawback; Coasting trade; Trade in Spirits; Offences and Penalties; and General Rules. With reference to the Appointment of Officers, he need only remark that no provision was made for any central body or Board of Administration. It was considered—and, he thought, wisely—that, if the law were made uniform throughout, the application and administration of the law might be left to the discretion of the Local Governments, subject, of course, to the general control of the Supreme Government. Then, a provision had been introduced in Section VI for the Declaration or Proclamation of Ports for the landing and shipment of goods, and for the forfeiture of goods landed or shipped elsewhere. This was said to be specially required in Bengal, as it was doubtful whether the law expressly prohibited the landing or shipment of goods anywhere along the coast where no customs establishment was located, and abuses consequently were known to prevail. Then Section XIV restored the former practice as to appeals, and directed that they should lie in the first instance to the Local Government with a general control merely on the part of the Governor-General in Council. Section XXIX, as to the responsibility of masters of vessels for goods unauthorizedly removed, related to a subject on which there had been much discussion, and he must, therefore, allow the Committee to state their own conclusions in their own words. They wrote—

> "In these Sections the objectionable provisions of the old Law (Section XII of Act XIV of 1836), regarding which the merchants of this port some time since addressed the Government, have been cancelled. The Committee think it is very unreasonable that the master of a vessel should be made responsible for acts which are avowedly altogether beyond his control. The master of the vessel is bound to deliver the goods to the consignees on the payment of freight and the production of the bills of lading. The goods having once left the ship's side he cannot possibly take any precautions to ensure their being landed at the custom house wharf or at any other wharf. The responsibility from the moment of delivery from the ship's side should rest with the consignee, and sufficient precautions have been taken in Sections XXX and XXXI to enforce this. The responsibility of the master, so far as in the opinion of the Committee it should rest with him, is clearly defined in Section XXIX."

In other words, the master was made responsible for any unauthorized removal of goods from the ship, but not for their further custody. Section XL provided that the Customs House Officers might take samples of goods; and it was explained that the number of articles on which duty was now chargeable *ad valorem* necessitated this provision, in order to secure proper appraisement. The importer would no doubt generally of his own accord meet the wishes of the Customs Officers

in this respect. But it was thought better that legal authority should be given to take samples if necessary, provision being made, of course, for the repayment of their value. The subject of Section XLI likewise—namely, the time to be allowed for the landing of goods after the entry of the vessel—had led to much discussion; and the Committee had entered into the question at some length in their report. As that document would be circulated among the papers relating to this Bill, it was not necessary that he (Mr. Erskine) should then read more than the Committee's statement of the conclusion at which they had arrived. After alluding to the insufficiency of the existing law and to a conference which they had had on the subject with the leading firms in this city, they concluded:

"All parties, however, eventually seemed to concur in the Committee's proposal to allow consignees a period of 15 days in which to land their own goods. But to enable ship-owners to make their own terms with shippers, a proviso has been added to the effect that if any earlier period than 15 days is expressed on the bills of lading for the discharge of any goods, and the consignees of such goods neglect to land them within the period so specified, the master may at once land the goods and the collector shall then hold them subject to the ship's lien. This provision should, in the opinion of the Committee, satisfy all parties; the term within which delivery of goods is to be taken being thus a matter of material agreement at the time of shipment. The same provision is contained in the English Law, Section LXX."

In connection with Section LXX there had been a difference of opinion among the Members of the Committee on one point, namely, whether a remission of duty should be allowed to importers, on account of ullage and wastage on goods which had been warehoused and were afterwards entered for consumption. The majority were of opinion that this remission should be made. The Supreme Government had concurred with the majority; and he certainly saw no reason to dissent, and would propose an alteration of the Section accordingly. The four Sections LXXIX to LXXXII were very important, and would confer new benefits on commerce by extending the advantages of the bonding system. They admitted of the removal of goods in bond not only from one warehouse to another, but from one Port to another, and of the trans-shipment of goods in bond. It appeared to him that some alterations were required in Section LXXIX, which was too indefinitely worded. But in substance he trusted that these Sections would be approved. Section CV also had given rise to a difference of opinion in the Committee. The majority, however, were of opinion that allowance of drawback on re-exportation need not be confined to cases in which the exportation took place from the original Port of importation. In this opinion the Supreme Government agreed. It seemed to be the more liberal one; and so long as proper precautions were taken to identify the goods and to prevent fraud, he thought it was the right principle. The provisions relative to the coasting Trade had been adopted from the English Act, and were said to be much required in order to check existing abuses. He need not, however, enlarge upon them at present, and would only notice that Section CXIX had been inserted in order to protect coasting steamers from vexatious interferences at the minor Ports along the coast. It was very desirable to foster undertakings of this description and prevent annoyances to those engaged in them. The Supreme Government had recommended the omission of Sections CXXVIII and CXXIX; but it seemed to him that there must be some misapprehension as regards the former Section. The latter apparently would have to be amended—but he would not then enter into the question as to the conditions on which the removal of country-made spirits from one Indian Port to another should be permitted. The papers appended to the Bill contained full statements on the subject, which might be discussed at a later period. Attention had specially been drawn by the Customs Committee to Sections CLIV, CLV, and CLVI, of which the first provided

that untariffed articles were to pay duty on the net market value of the like kind of goods in bond ; the second authorized the Local Government to fix a Tariff value on any articles ; and the third authorized the Customs Authorities to take over undervalued goods on account of Government. The Committee remarked on these Sections that the correctness of the principle of levying duty on the net value in bond had been approved by Government in November last, and that the provision under which duty used to be levied from the importer when the right of pre-emption was exercised, could therefore no longer stand. There was no doubt some inconsistency in admitting the principle of Section CLV just after the adoption of a uniform Tariff for the whole country, but in practice, apparently, the discretion thus proposed to be conceded could not at once be dispensed with. Section CLXI provided for the licensing of cargo boats, which was now done in Bombay, and might, it was believed, be done elsewhere with advantage. He (Mr. Erskine) had noted several other Sections for comment, but, with one or two exceptions, they related to matters of comparatively minor importance, and he had already detained the Council so much longer than he had intended, or could have wished, that he should refrain from entering into further details. These, then, were the remarks which he had deemed it right to make in introducing this Bill ; and he would only in conclusion express a hope that, when Honorable Members should have had an opportunity of carefully considering the provisions of the Bill itself, they would concur in thinking that it was well calculated to promote the uniform and effective management of this important Department, to remove uncertainties, to prevent vexatious interference with trade ; and that the gentlemen to whom it was due, therefore, had well deserved the acknowledgments of all those who had at heart the improvement of the law and the convenience of commerce in this country.

The Bill was read a first time.

COURTS OF REQUESTS (STRAITS SETTLEMENT.)

MR. FORBES moved the second reading of the Bill " to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

The Motion was carried, and the Bill read a second time.

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill " to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter);" and that the Committee be instructed to consider the Bill in the amended form in which it had been submitted by the Select Committee with their preliminary Report.

Agreed to.

Sections I and II provided as follows :—

" I. The local Government may empower any Court of Small Causes constituted under the said Act XLII of 1860, to hear and determine under the Rules contained in Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal) the claims cognizable under that Act arising within the local limits of the jurisdiction assigned to such Court as a Court of Small Causes. Any Court so empowered shall exercise all the powers of a Collector under the said Act X of 1859, except the power of hearing appeals.

II. The local Government may invest, within the same limits, the Judge of any Court of Small Causes constituted under the said Act XLII of 1860, with all or any of the powers of a Magistrate, and also with the powers of a Principal Sudder Ameen for the trial and determination of civil suits under the rules applicable thereto, other than suits and claims falling within the provisions of the said Act XLII of 1860, and Act X of 1859."

MR. HARINGTON said, before he moved the amendments, of which he had given notice, he wished to be allowed to express his deep regret, in which he was sure every Honorable Member present would participate, that the severe illness with which the Honorable Member of the Government who

had brought in this Bill had been so suddenly attacked, should have compelled him to leave India for a time for the recovery of his health, and that this should have been the cause of the charge of the Bill having devolved upon him (Mr. Harington). He had further to regret, (however well and ably Bengal was represented at the present time), that what he must regard as the premature resignation of his seat by their late esteemed colleague (Mr. Sconce) to whose excellent manner of conducting his duties as a Member of this Legislature, the Honorable and learned Vice-President had, with the hearty concurrence of all present, borne honorable testimony on the last occasion on which the Honorable Member had made his appearance in that Chamber, should have left him (Mr. Harington) the sole Member of the Select Committee to which the Bill was referred for a preliminary Report. The late Honorable Member for Bengal had printed and circulated certain amendments in the Bill as settled by the Select Committee which it was his intention to have moved when the Council resolved itself into a Committee of the whole Council upon the Bill. The Bill was in the Orders of the Day for that day three weeks for a Committee of the whole Council, and it was fully expected that the Bill would have been committed upon that day, but other more important business prevented it from being brought forward, and the late Honorable Member for Bengal thus lost the opportunity of proposing his amendments, which he (Mr. Harington), very much regretted. He did not concur in those amendments, and had the late Honorable Member for Bengal moved their adoption, he should certainly have considered it his duty to oppose the Motion. The first amendment proposed to give a special appeal to the Sudder Court from every decision passed under the Act which the present Bill had been brought in to amend, not only upon points of law, but upon many other points which, in practice, by a little skilful management on the part of Counsel learned in the law, would open almost every case to appeal. He would say nothing as to what would be the effect of the amendment, if adopted, on the files of the Sudder Courts, which had already more work than they could dispose of with the despatch which was so desirable, but it must be obvious that the amendment was directly opposed to a fundamental provision of Act XLII of 1860, to wit, that there should be no appeal in the cases decided under that Act, though, under certain circumstances, a case might be stated for the opinion of the Sudder Court. The next amendment of the late Honorable Member for Bengal proposed to invest the Local Governments with discretionary power to reduce the pecuniary jurisdiction conferred by Act XLII of 1860 on the Courts constituted under that Act, but he (Mr. Harington) could see no adequate cause for any such change in the existing law. He certainly could find no reason for it in the appointments recently made to the Courts of Small Causes about to be established in Bengal. In all quarters he heard those appointments well spoken of. It was not his intention to move the amendments proposed by the late Honorable Member for Bengal. As he had already said, he did not agree in those amendments. It was of course open to any other Honorable Member who thought proper to move their adoption. For his own part he was content with Act XLII of 1860 as it stood, but as it was thought that some of the amendments, of which he had given notice, would enable the Local Governments to extend the benefit of Courts of Small Causes much farther than, with a due regard to financial and other considerations, would otherwise be possible, and none of the proposed amendments affected the principle of the original Act, he was willing to assent to them. The measure must be regarded as purely experimental. This would be the case for some time. All that he asked for the measure was that it should be allowed a fair trial. If this were accorded, he had no fear as to the result. But happen what might, he felt bound to say that the Supreme Government, by its liberality in the matter of salary, and

the Bengal Government by the care and judgment exercised by it to secure fitting agents to carry out the Act, had done their best to ensure its successful operation. As regarded the first three amendments, of which he had given notice, he would only observe that they merely proposed a different, and as it appeared to him, a more convenient arrangement of the Sections to which they related. If adopted, they would leave the Sections substantially as settled by the Select Committee on the Bill.

With these remarks he begged to move the omission of the 1st and 2nd Sections in order to substitute the following :—

"I. The Local Government may invest any Court of Small Causes constituted under Act XLII of 1860, within the local limits of the jurisdiction assigned to such Court, with the powers of a Principal Sudder Ameen for the trial and determination of civil suits under the rules applicable thereto, other than suits falling within the provisions of the said Act XLII of 1860. The decisions passed by a Court of Small Causes in the exercise of the powers conferred under this Section, shall be open to regular and special appeal in the same manner, and subject to the same rules, as if they had been passed by a Principal Sudder Ameen.

II. The Local Government may also invest, within the same limits, the Judge of any Court of Small Causes, constituted as aforesaid, with all or any of the powers of a Magistrate for the trial and decision of cases cognizable by a Magistrate, but no other jurisdiction in criminal matters shall be exercised by any Court so constituted.

III. In the places in which the provisions of Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal) are in force, the Local Government may empower any Court of Small Causes, constituted as aforesaid, to hear and determine, under the rules contained in the said Act X of 1859, and subject to the same regular and special appeal, the claims cognizable under that Act arising within the local limits of the jurisdiction of such Court. Any Court so empowered shall exercise all the powers of a Collector under the said Act X of 1859, except the power of hearing appeals."

THE CHAIRMAN said, he had no objection to the omission of Sections I and II, but not for the purpose of substituting the particular Sections proposed, which seemed to him to require amendment. By voting therefore for the question of omission, he did not wish to be bound to the Sections proposed to be substituted, as they now stood.

The question to omit Sections I and II was then put and carried.

The question to substitute the proposed Sections being read—

THE CHAIRMAN said, as he understood the object of the 1st Clause, it was to enable the Local Government to invest any Judge of a Court of Small Causes with the powers of a Principal Sudder Ameen. He believed it was stated by the Lieutenant-Governor of Bengal, in some papers which had been laid before the Council, that if some such provision were not made, there would be difficulty in appointing Small Cause Court Judges, as there would not be sufficient work to occupy their time, and consequently the measure would prove too expensive. The Lieutenant-Governor, therefore, proposed that the Small Cause Court Judges should be invested with the powers of a Principal Sudder Ameen. He also proposed that the Judges should be invested with the powers of a Magistrate, which was the object of the second proposed Clause ; and he further proposed that the Judges should have the power to try cases under Act X of 1859, and that was the object of the third amendment.

With regard to the 1st Clause, he doubted very much whether the words employed really carried out the intention. The Clause provided that

"The Local Government may invest any Court of Small Causes constituted under Act XLII of 1860, within the local limits of the jurisdiction assigned to such Court, with the powers of a Principal Sudder Ameen."

He should prefer to stop here, but the Section went on—

"for the trial and determination of Civil suits under the rules applicable thereto, other than suits falling within the provisions of the said Act XLII of 1860."

Now there were two classes of suits falling within the provisions of that Act, namely, suits cognizable by Small Cause Courts, and suits not cognizable

by them. The suits cognizable were those mentioned in Section 3 of the Act, namely,

"claims for money due, whether on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of Rupees 500."

And then the Section went on to describe what suits were not cognizable by a Court of Small Causes, namely,

"on a balance of partnership account, unless the balance shall have been struck by the parties or their agents; or for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will; or for any claim for the rent of land, or any other claim for which a suit may be brought before a Revenue Officer, or for the recovery of damages on account of alleged personal injuries, unless special damage of a pecuniary nature shall have resulted from such injury."

He supposed that, by the words "other than suits falling within the provisions of the said Act XLII of 1860," were meant suits cognizable by a Court of Small Causes, but, as the learned Clerk of the Council had observed to him, the words were applicable to suits not cognizable by a Court of Small Causes. The question would therefore arise—what were the suits which it was intended that the Judge of a Court of Small Causes, with the powers of a Principal Sudder Ameen, should try? He should prefer to leave the Section so worded as simply to empower the Local Government to invest a Small Cause Court Judge with the powers of a Principal Sudder Ameen; and then he would, as a Small Cause Court Judge, try all suits cognizable by a Court of Small Causes, and, as a Principal Sudder Ameen, all suits cognizable by a Principal Sudder Ameen, subject, of course, in his latter capacity, to the ordinary regular and special appeals. But the amendment went on to say—

"The decisions passed by a Court of Small Causes in the exercise of the powers conferred under this Section, shall be open to regular and special appeal in the same manner, and subject to the same rules, as if they had been passed by a Principal Sudder Ameen."

Now it appeared to him (the Chairman) that, when the officer was acting in a Court of Small Causes, there ought not to be an appeal from any decision passed by him; though, if he were trying as a Principal Sudder Ameen, it was obvious that he would be subject to the ordinary rules under which a Principal Sudder Ameen tried suits. But the 6th Section of Act XLII of 1860 provided that—

"Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court under the provisions of this Act shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Small Cause Court."

It appeared to him that this provision, taken in connection with the words of the proposed Clause above referred to, would give rise to considerable confusion, and that the better plan would be to stop at the words "Principal Sudder Ameen," and leave the Judge of a Court of Small Causes, who might be invested with the powers of a Principal Sudder Ameen, to the ordinary law which would guide the decision of suits by Principal Sudder Ameens. He should therefore propose the omission of all the words after the words "Principal Sudder Ameen" in the 6th line of the Section.

MR. HARINGTON said, the intention of the Sections had been correctly stated by the Honorable and learned Chairman, and if that intention had not been expressed with sufficient clearness in the Sections as they were framed, he could have no objection to the wording of the Sections being altered so as to make their meaning perfectly clear. The object of the insertion of some of the words remarked upon by the Honorable and learned Chairman was to prevent a Judge of a Small Cause Court, when invested with the powers of a Principal Sudder Ameen, from hearing appeals from the Moonsiffs and Sudder Ameens. He thought that, if a Judge of a Small Cause Court were empowered to try the three classes of cases proposed in addition to his duties as a Small Cause Court Judge, he would have ample

work to occupy his entire time, and that the better course would be to confine such officers at present to the trial of original suits without giving them any appellate jurisdiction. Sudder Ameens and Moonsiffs, where their Courts were retained, would continue to be subordinate to and subject to the control of the Zillah Judge, and he (Mr. Harington) thought that the appeals from their decisions should be heard by that authority.

THE CHAIRMAN said, supposing an English Barrister were appointed a Judge of a Small Cause Court, and the Local Government thought fit to invest him with the powers of a Principal Sudder Ameen, he would be equally competent to hear appeals from Moonsiffs and Sudder Ameens as to try original suits cognizable by Principal Sudder Ameens.

MR. HARINGTON said, it was a question, not of competency, but of expediency. He did not doubt the competency of the persons who might be appointed Judges of Courts of Small Causes to decide appeals, but for the reason, which he had already given, he did not wish them to exercise appellate jurisdiction. He would not however press his objections.

THE CHAIRMAN'S Motion was then put and carried; and after some further amendments (on the Motion of the Chairman), Section I was passed as follows:—

"The Local Government may invest any Judge of a Court of Small Causes constituted under Act XLII of 1860 with the powers of a Principal Sudder Ameen within such local limits as the Local Government shall from time to time appoint."

The proposed Sections II and III were passed after amendments.

MR. HARINGTON moved the introduction of the following as Sections IV and V:—

"An officer to be styled the Clerk of the Court may be appointed to any Court of Small Causes constituted as aforesaid, on such salary as shall be authorized by the Governor-General of India in Council. The appointment and removal of such officer shall rest with the Court, subject to the approval of the Local Government.

When a Clerk is appointed to any Court of Small Causes constituted as aforesaid, such Clerk shall, subject to the orders of the Court, issue all Summonses, Warrants, Orders, and Writs of Execution, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all moneys payable or paid into or out of Court, and shall enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose."

Agreed to.

MR. HARINGTON said, it was necessary that he should preface his Motion for the adoption of the amendments which stood next in order on the notice paper, with a few remarks. Honorable Members would probably have observed in the Official Gazette, announcing the establishment of Courts of Small Causes in certain places within the Lower Provinces of Bengal, and the appointment of Judges to those Courts, that two of the gentlemen so nominated were appointed Judges, not only of the Courts at the Sudder Station of their respective Districts, but also of the Courts ordered to be established in the interior of those Districts. He understood that it was the desire of the Honorable the Lieutenant-Governor of Bengal that these gentlemen should occasionally sit and hear and determine cases of comparative difficulty and importance with the Judges of the Mofussil Courts of their respective Districts. The Honorable the Lieutenant-Governor of Bengal had apparently long entertained the idea that in every District there should be a chief or superior Judge who should hold a rank in the Judicial Department corresponding to the rank held by the Commissioners of Divisions in the Executive Department. He would have this chief or superior Judge make regular circuits to the other Civil Courts of the District and sit with the Judges of those Courts in hearing and determining difficult and important cases. An outline of the plan proposed by the Honorable the Lieutenant-Governor of Bengal would be found in the remarks made by him when a Member of this Council on the Motion for the second reading of the Civil Procedure Bill, and in the arrangements

recently made, as described in the Gazette to which he (Mr. Harington) had alluded, the Honorable the Lieutenant-Governor of Bengal appeared to be desirous to some extent of carrying out the plan. He (Mr. Harington) thought there could be no doubt that the arrangement would be found to have its advantages. He saw no objection to its adoption, but he believed that some provision of law was necessary to give legal effect to it, and the amendments which he was now about to propose would probably be considered sufficient for the purpose. He should move the addition of the following as Sections VI to IX;

"VI. Whenever more Courts than one are constituted in any District under the said Act XLII of 1860, the Court so constituted at the Sudder Station shall be the Principal Court of Small Causes of such District.

VII. The Judge of the Principal Court of Small Causes in any District may sit with the Judge of any other Court of Small Causes, constituted as aforesaid, in the same District, for the trial and determination of any suit cognizable under the said Act XLII of 1860, which the Judge of such other Court may reserve for trial by himself and the Judge of the Principal Court of Small Causes.

VIII. When two Judges sit together for the trial of a suit under the last preceding Section, and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court, and shall be signed by both Judges. If, in the trial of any suit, such Judges shall differ on a point of law, or usage having the force of law, or on the construction of a document affecting the merits of the decision, they shall submit a case for the opinion of the Sudder Court on the point of difference between them in the manner prescribed in Section 13 of the said Act XLII of 1860, and the rules applicable to a reference to the Sudder Court contained in Sections 14, 15, 16, 17, 18, and 19 of the said Act, shall be applicable to the reference made in such suit.

IX. If such Judges differ on any point other than the points abovementioned, or the construction of a document, the Judge of the Principal Court of Small Causes shall have the casting voice."

The Sections were passed after amendments in Sections VI and IX.

MR. HARINGTON moved the addition of the following new Section:—

"X. All suits cognizable under the provisions of the said Act XLII of 1860, which shall be pending before any Court within the limits of the jurisdiction of a Court of Small Causes constituted under the said Act, at the time of the constitution of such Court, shall be heard and determined in the same manner as if such Court had not been constituted."

Agreed to.

The Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported with amendments.

MR. HARINGTON said that, the Standing Orders having been suspended, he begged to move that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

POLICE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate temporarily the procedure of the Police enrolled under Act V of 1861 (for the regulation of Police); and that the Committee be instructed to consider the Bill in the amended form in which it had been circulated.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

ROHILCUND DIVISION.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general

Regulations and Acts," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON said that, since this Bill was read a second time, he had ascertained from a communication with which he had been favored by the Honorable the Lieutenant-Governor of the North-Western Provinces that the whole of the Pergunnahs of Juspoor and Kashoepore, which were included in the Schedule of the Bill as it now stood, were not situate within the Teraee, and that the parts of those Pergunnahs not so situated were nearer to the Station of Mooradabad than to the site proposed for the new station which it was intended to establish as soon as this Bill should become law. The local authorities had no desire that the Bill should extend to any part of the Rohilcund Division not falling within the Teraee, and the object of the amendment of which he had given notice was to enable the Honorable the Lieutenant-Governor of the North-Western Provinces to exclude from the operation of the Bill those parts of the two Pergunnahs named in the amendments which were not so situated, and which, as he had already mentioned, were nearer to their present sudder station of Mooradabad than to the site of the proposed new station.

The Bill passed through Committee after the necessary amendments, and the Council having resumed its sitting, was reported.

PORT-DUES (CONCAN).

MR. ERSKINE moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues in the Ports of the Concan"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after the substitution of "1st day of July 1861" for "1st day of May 1861," as the date of commencement of the Act; and the Council having resumed its sitting, the Bill was reported.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Sections 142 and 143 provided as follows:—

"142. Provided that it shall be competent to a Court of Session to charge a person for any such offence committed before it or under its own cognizance, and to try such person upon its own charge. Provided also that in any case triable by the Court of Session, it shall be lawful for any Court of Civil Judicature before which the offence was committed, instead of sending the case for investigation to the Magistrate, to complete the investigation itself and to direct the commitment of the accused person to the Court of Session.

143. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinafter provided, and shall transmit the same with the order of commitment and the record of the case to the Magistrate, and the Magistrate shall bring the case before the Court of Session in like manner as if the preliminary enquiry had been made by himself."

MR. HARINGTON moved the omission of the above Sections and the substitution of the following:—

"It shall be competent to a Court of Session to charge a person for any such offence committed before it or under its own cognizance if the offence be triable by the Court of Session, and to try such person upon its own charge. In such case the Court of Session shall have the same power of summoning and causing the attendance at the trial of any witnesses for the prosecution or for the defence which is vested in a Magistrate by this Act.

In any case triable by the Court of Session, it shall be lawful for any Court of Civil Judicature before which any such offence was committed, instead of sending the case for investigation to a Magistrate, to complete the investigation itself and to direct the commitment of the accused person to the Court of Session.

When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinafter provided, and shall transmit the same with the order of commitment and the record of the case to the Magistrate of the District or other Officer exercising the powers of a Magistrate, and such Magistrate or other Officer as aforesaid shall bring the case before the Court of Session toge-

ther with the witnesses for the prosecution and defence in like manner as if the preliminary enquiry had been made by himself.

If any such offence, triable by the Court of Session, was committed before a Magistrate not empowered to commit for trial before a Court of Session, such Magistrate shall send the case to a Magistrate competent to make such commitment who shall proceed to pass such order in the case as he may think proper."

The Sections were passed after some verbal amendments and after the introduction (on the motion of the Chairman) of the following new Section before the last :—

"Whenever any Court of Session or Civil Court shall commit or hold to bail any person for trial under Section 142 or 143, such Court may also bind over any person to give evidence, and, for that purpose, may exercise all the powers of a Magistrate."

Section 146 was passed after amendments.

Section 147 was passed as it stood.

Sections 148 and 149 were passed after amendments.

Section 150 was passed as it stood.

Sections 151 and 152 were passed after amendments.

Sections 153 to 155 were passed as they stood.

Section 156 was passed after amendments.

Sections 157 to 161 were passed as they stood,

Section 162 provided as follows:—

"The evidence of each witness shall be taken down in writing in the language in ordinary use in proceedings before the Court, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate, not ordinarily in the form of question and answer, but in the form of a narrative, and when completed shall be read over to the witness in the presence of the person accused if in attendance, or of his agent when his personal attendance is dispensed with and he appears by agent, and shall, if necessary, be corrected, and shall be signed by the Magistrate. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given. When the evidence of a witness is given in English the Magistrate may take it down in that language in his own hand. It shall be in the discretion of the Magistrate to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for so doing, or any person who is a prosecutor or a person accused shall require it. The Magistrate shall record such remarks as he may think material respecting the demeanor of any witness while under examination. In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so."

SIR CHARLES JACKSON proposed to substitute the words "in the language in ordinary use in the district in which the Court is situated" for the words "in the language in ordinary use in proceedings before the Court" in the beginning of the Section.

The amendment being put, the Council divided—

Ayes 4.	*Noes* 3.
Sir Charles Jackson.	Mr. Forbes.
Mr. Erskine.	Mr. Harington.
Sir Robert Napier.	The Chairman.
Sir Bartle Frere.	

So the motion was carried.

THE CHAIRMAN moved the substitution of the words "by the witness" for the words "by the Magistrate," at the close of the first sentence; and said he proposed, if this amendment should be carried, to move the following amendment, in order to ensure the provisions of the Section being fully carried out.

Agreed to.

THE CHAIRMAN then moved the insertion of the following words after the above :—

"The Magistrate shall sign a memorandum stating that the evidence was taken in his presence and hearing and under his personal direction and superintendence."

MR. FORBES said that he objected to the introduction of these words as unnecessary, and as showing a needless

and, in his opinion, undeserved distrust of the Magistrates. At the end of the Section on which the Committee was engaged were these words—

"In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so;"

and it appeared to him (Mr. Forbes), not only that these words gave all the security that was wanted that evidence should be taken down *bonâ fide* by the Magistrate, but that to require a certificate in addition to this, showed a doubt of the good faith in which this part of the law would be carried out. The proposed addition to the Section was further in his opinion unnecessary, since if any Magistrate would so far forget his duty as to evade the provision of the law which he had just read, he would probably also evade the words now proposed to be added. He should therefore vote against the proposed amendment.

MR. HARINGTON said, he was also opposed to the introduction of the words objected to by the Honorable Member for Madras. He thought that the Section, as at present framed, afforded all the security they could fairly and reasonably require that the evidence of every witness should be taken in the manner provided in the Section. The object aimed at was to oblige the Magistrate, as the examination of each witness proceeded, to give his mind to what the witness was deposing and to conduct the examination himself instead of leaving that duty to others and having his own attention diverted to other matters. The part of the Section quoted by the Honorable Member for Madras had been introduced for the express purpose of securing this object. The provision appeared to him quite adequate for the purpose, and he could see no sufficient reason for the proposed addition.

After some further discussion, the question being put, the Council divided—

Ayes 5.	*Noes* 2.
Sir Charles Jackson.	Mr. Forbes.
Mr. Erskine.	Mr. Harington.
Sir Robert Napier.	
Sir Bartle Frere.	
The Chairman.	

So the Motion was carried, and the Section, as amended, was passed.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

STAGE CARRIAGES.

MR. HARINGTON postponed the motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

CATTLE TRESPASS.

MR. HARINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

Agreed to.

RECOVERY OF RENT (BENGAL).

MR. HARINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)."

Agreed to.

PORT BLAIR.

MR. HARINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to regulate the administration of affairs in Port Blair."

Agreed to.

MALACCA LANDS.

MR. HARINGTON moved that Mr. Seton-Karr be added to the Select

Committee on the Bill "to regulate the occupation of land in the Settlement of Malacca."

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

BREACH OF CONTRACTS; AND REGISTRATION OF CONTRACTS.

SIR BARTLE FRERE moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce," and the Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of agricultural produce."

Agreed to.

COURTS OF REQUESTS (STRAITS SETTLEMENT).

MR. FORBES moved that the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee consisting of Sir Charles Jackson, Mr. Seton-Karr, and the mover.

Agreed to.

SALTPETRE.

MR. HARINGTON gave notice that he would on Saturday next, move the second reading of the Bill "to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof."

STAGE CARRIAGES.

MR. HARINGTON moved that the Bill "for licensing and regulating Stage Carriages" be proceeded with in Committee of whole Council next Saturday before the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

THE VICE-PRESIDENT said, he thought it very possible that the Stage Carriages Bill might give rise to some discussion. As to the Criminal Procedure Bill, although it was proposed that it should not take effect before the 1st of January next, yet it was very desirable that it should be passed into law as early as possible, so as to admit of its being translated and published in sufficient time before it came into operation.

MR. HARINGTON said that, after what had fallen from the Honorable and learned Vice-President, he would not press his Motion.

The Council adjourned.

Saturday, May 25, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere.	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.
C. J. Erskine, Esq.,	

SMALL CAUSE COURTS AND POLICE.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XLII of 1860," and the Bill "to regulate temporarily the procedure of the Police enrolled under Act V of 1861 (for the regulation of Police.)"

LIMITATION OF SUITS.

THE CLERK reported to the Council that he had received by transfer from the Home Department, a communication from Mr. G. Norton, forwarding a Memorial from Shah Koondun Lall and Shah Phoondun Lall, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits.)

THE VICE-PRESIDENT moved that the above communication be printed.

Agreed to.

CATTLE TRESPASS.

THE CLERK reported to the Council that he had received a further communication from the Bengal Government relative to an amendment of Act III of 1857 (relating to trespasses by Cattle.)

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill to amend that Act.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS SETTLEMENT.)

MR. FORBES presented the Report of the Select Committee on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

SALTPETRE.

MR. HARINGTON moved the second reading of the Bill "to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof."

The Motion was carried, and the Bill read a second time.

ROHILCUND.

MR. HARINGTON moved that the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the Tribunals established under the general Regulations and Acts" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

PORT-DUES (CONCAN.)

MR. ERSKINE moved that the Bill "for the levy of Port-dues in the Ports of the Concan" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON moved the introduction of the following new Section after Section 162 :—

"It shall be competent to the local Government to direct that in any district or part of a district to which this Act shall extend, or shall hereafter be extended under the provisions of Section 360, the evidence of witnesses shall be taken down by the Magistrate with his own hand, in the Vernacular language of the Magistrate, unless the Magistrate be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. The evidence shall be taken down, not ordinarily in the form of question and answer, but in the form of a narrative, and when completed, shall be explained to the witness, and shall, if necessary, be corrected. It shall be in the discretion of the Magistrate to take down any particular question and answer, if there shall appear any special reason for so doing, or any person, who is a prosecutor, or a person accused, shall require it. The Magistrate shall record such remarks as he may think material respecting the demeanor of any witness while under examination. The evidence so taken down shall be signed by the Magistrate, and shall form part of the record. If the Vernacular language of the Magistrate be not English, and the Magistrate be able to take down the evidence as required by this Section in a clear and intelligible manner in the English language, he may take down the evidence in that language."

He said, the Committee would observe that this Section, which he was anxious to see introduced at the part of the Code at which they had now arrived, differed very materially from the Section originally proposed by him for insertion in that place. The alteration which he had made in the Section was suggested by some remarks which fell from Honorable Members on Saturday last, and he might say

indeed that he had been led to remodel the Section and to give it the form in which it now appeared, very much in deference to the opinion expressed by those Honorable Members. He should be very glad if the alteration thus made in the Section had the effect of removing the objections which some Honorable Members appeared to entertain to the Section as it originally stood. As he first drew the Section, it required that the Magistrate should take down only the substance of the evidence given by each witness. Under the Section as at present worded, it would be the duty of the Magistrate to reduce the entire deposition of the witness into writing. As he had already said the difference was very material.

There could be no doubt that the question raised by the proposed new Section was a very difficult one, and that it had a very important bearing on the interests of justice. He had no wish that the Section should be adopted by the Committee without full consideration and discussion. But he must ask Honorable Members to bear in mind, that in the Courts, in which Native Magistrates presided—and the number of such Courts was large—all that the proposed new Section, when extended to Courts so presided over, would do, would be to compel the Magistrate or presiding Officer to take down the evidence of each witness, as the examination proceeded, with his own hand, thus following the practice observed by Her Majesty's Judges in the Supreme Courts of Judicature, instead of leaving this duty to be performed by an ill-paid underling or Mohurrir. The Native Magistrate might already do this under the last Section settled by the Committee; but what that Section left optional, the proposed Section made imperative. Of the ability of the Native Magistrates to take down with their own hands evidence which would generally be given in their own Vernacular, there could be no doubt, and the substitution of a trustworthy judicial officer for a badly paid ministerial officer for the performance of this important duty, must, he thought, be regarded as a very great improvement on the present practice. The case of the European Magistrate remained to be considered. No doubt the practical effect of the rule contained in the proposed new Section must be to impose some additional labor upon that functionary, and knowing how extremely arduous were the duties of the European Magistrates who were also Collectors, and how severely the time and strength of those officers were already taxed, he certainly felt some hesitation in proposing a measure which would add to their burthens; but high public considerations were involved in the question which must outweigh all considerations of mere convenience, using that word in the sense of ease or freedom from labor, and if, under the operation of the proposed rule, it was found impossible for the Magistrates, whether European or Native, to get through the same quantity of work which they did at present—and the impossibility of their doing so was the principal objection he had heard out-of-doors against the rule—he apprehended that it would be the duty of the Government, in order to prevent the accumulation of arrears, to appoint additional Officers. It had also been suggested that some of the European Magistrates were not sufficiently familiar with the native languages to be able correctly to take down the evidence of native witnesses, and it was said that, under the proposed rule, there would be a risk, when such was the case, of the meaning of the witness being perverted or not rendered correctly, and that the consequence might be a failure of justice caused either by a wrong conviction or by a wrong acquittal. But he submitted that any Magistrate to whom these remarks were applicable, would be altogether disqualified for giving judgment on native evidence taken down by another person. It must be quite obvious that he could exercise no check upon the writer of the deposition, and whether the writer from carelessness or some improper motive recorded the evidence wrongly, or whether the

Magistrate, from his ignorance of the language of the witness, misrepresented what he said in his notes of the evidence, the result would be pretty much the same. He did not think there was much force in the objection which he had just noticed, and he could only hope that the instances would be very rare indeed, in which an officer, who was not sufficiently conversant with the native languages to be able himself to cross-examine the witnesses, and correctly to render what they said in his own Vernacular, would be found exercising the important functions of a Magistrate, however limited his powers might be.

Although it was not intended that the Procedure Code, the details of which they were now settling, should take effect in any Non-Regulation district until it was extended thereto by an order of the local Government, he thought Honorable Members would agree with him that when the Indian Penal Code, which was of general application, came into operation, it was very desirable that there should be one uniform Code of Criminal Procedure throughout the country for carrying out the provisions of that Code. This might not be absolutely necessary, but it was certainly highly expedient. He had mentioned on a former occasion, that the rule contained in the Section now proposed was already acted upon, either wholly, or in part, in some of the Non-Regulation districts, and if the Code of Criminal Procedure was to be extended to those districts, some rule of the nature of that proposed seemed necessary to enable the local Governments to authorise the continuance of the practice ; otherwise simultaneously with the introduction of the new Code of Criminal Procedure, however long the rule might have been in force, and however well and satisfactorily it might have worked, it must be discontinued. He feared that when the local Governments found that this would be the result of their introducing the Code, as at present framed, they would prefer that the advantages which might be expected to follow the introduction of the Code should be foregone, rather than that the practice referred to should be abolished. He considered that this would be a subject for regret. It had been suggested that the Code should be settled at present with reference to the Regulation districts only, and that if hereafter the local Governments should desire to extend the Code to any of the Non-Regulation districts under their authority, and they should consider any of the provisions of the Code unsuited to those districts, they should apply to the Council for some modification of the particular provisions objected to. But with all deference to those who made the suggestion, he must say that he could not concur with them in considering the course proposed a right or proper one. They had all the materials and all the information that they required before them, and it seemed to him that they should endeavor now so to frame the Code that it should issue in a complete form, and be susceptible of being introduced at once, as well into the Non-Regulation as into the Regulation districts. He did not mean to say that every Section of the Code must be made applicable alike to both Regulation and Non-Regulation districts. This was not his meaning. What he intended was that, looking to the different circumstances of different parts of the country, the Code should be so framed as to admit of its general introduction. Frequent alterations of the Code or constant applications to the Legislature to modify its provisions in order to suit the Code to this place or that place, would, he thought, be highly objectionable. This might easily be avoided, by giving some discretionary power to the local Governments, such as was now proposed, where a uniform rule might operate inconveniently. The Select Committee had proposed that this should be done in respect to trials by jury or with the aid of assessors. Furthermore, it seemed to him that, the question having been raised as to whether a Magistrate should or should not be allowed or required to record the evidence of witnesses with his own hand and in his own Vernacular,

Mr. Harington

though that might not be the Vernacular of the witness, and the fact that such was already the practice to some extent in many of the Non-Regulation districts having been brought prominently to the notice of the Council, they could not pass over the question in silence, or without considering it and coming to some decision in respect to it. It appeared to him that they were bound to enquire whether the practice was right in itself, and if so, whether they ought not to provide for its more general observance, or, on the other hand, if they thought the practice was wrong, whether they were not required to take steps to put a stop to it where it obtained. He apprehended that they had full power to do this by passing a prohibitory law. There could not be that great difference between the Regulation and Non-Regulation districts, as, in a matter of this nature, to render that quite wrong in the one, which was quite right and proper in the other, or *vice versâ*. If the rule was good for the Non-Regulation districts, he did not see why it should not be equally good for the Regulation districts also, and why it should not be extended to them. With the permission of the Council he would read an extract from the last Annual Administration Report of the Judicial Commissioner of Oude, to show the extent to which the practice had been carried in that Province, and the success which had attended its introduction.

The Judicial Commissioner said—

"Our system is now something totally different from what it was in former days. Every witness is examined as a real witness face to face with the Judge in open Court, instead of making an affidavit to a Mohurrir to be afterwards gabbled over before the Judge, and there is no longer any Vernacular record of the evidence (except, of course, when the Judge is himself a native) in any case great or small, saving those tried by unpassed Assistants, whose want of knowledge of the language renders it necessary that some one else should for security record it. In all other trials, Criminal and Civil, before all other Officers of every description, the record simply consists of the notes taken by the Judge in his own hand.

No doubt, this is a bold, and to most Indian Officers, it will seem a startling innovation. In a country where a Judge is supervised and criticised by a public and a press, and the Judge is of the same race and language as the witness, there can be no doubt about it. But in this country there seemed at first some ground for hesitation. Although I have, for several years, always enforced within my jurisdiction the proper examination of the witnesses, and the filing of the notes taken by the Judge as the primary and most authentic record, I for long clung to the plan of keeping up an official reporter, a man in no way analogous to the old Izhar Nuvees, but a skilled reporter, sitting obscure in a corner, and saying not a word, but making a note in the language of the witness more full and exact than an English note could be. That plan we have gradually abandoned, as we advanced in experience, not without some regrets, and I may, therefore, be regarded as an impartial witness, when I say that, so far as we have yet gone, all our experience and the feeling of most of the local Officers, is in favor of the great success of the present unqualified system.

It is remarkable how much opinion has turned in favor of the scheme. There was much doubt and difficulty at first, but gradually almost every one has come round to like and praise it in its essential features; there is only difference of opinion about some of the details. I consider it, then, to be established that the system is a most decided success.

In practice we have found the present record sufficient for our purposes. The great doubt might have been whether it would suffice for revision, review, and appeal. It has, I think, quite sufficed for such purposes. The record now gives us a rapid insight into the main facts and proceedings, conduct, and train of induction in the mind of the Judge, and provided he is honest, does his duty, and writes an English character (not unintelligible hieroglyphics) nothing is usually wanting. It may be objected that if the Judge be dishonest, prejudiced, spiteful, or partial, if he slurs over the duty, or if he writes an illegible hand, the object will be defeated.

I reply that we presume that only men possessing the most ordinary and necessary qualifications will be judicially employed. Honesty, industry, and education, to the point of reading and writing, may fairly be required, and without difficulty exacted from all Officers so employed. I consider, then, that so far there is really no difficulty. If any man does not take proper and legible notes, I shall submit a recommendation for his being dealt with by the Chief Commissioner.

The abolition of the system of trying upon the record has ridded us of one of the chief difficulties in the way of the system. The only cases, in respect to which I have sometimes doubts, are the important Criminal ones referred by Commissioners for my confirmation. I confess that if I were to decide very difficult and delicate questions of fact upon the somewhat summary notes of the evidence, which I have sometimes received, I should be

embarrassed, but I consider first, that I do not try upon the record, that the Commissioner tries the case, and passes sentence, and that I merely endorse, confirm, or modify his sentence with reference to the information before me, the Commissioner being responsible in a primary, I in but a secondary degree, and next I think that we may fairly require that the minuteness and fullness of the notes should be proportioned to the importance and difficulty of the case, and that Commissioners must make a full and careful record of heavy cases.

Of the advantage and necessity of following our mode of fairly examining each witness in open Court, instead of allowing a subordinate Mohurrir to do so, I cannot conceive that (prejudice and habit apart) there can be any difference of opinion. True, the process occupies time; true, a witness may be stolid or obdurate, to get him to the point may be a work involving some labor and patience; but we may as well shut up our Courts altogether as, say, that we have not time and patience to take evidence. If we profess to administer justice, we must supply sufficient judicial power for the purpose, and in my opinion to counterbalance the time and toil of examining witnesses, much may be gained by the avoidance of irrelevant matter, a good procedure, and judicial habits of business. As yet we have found no difficulty in getting through the work, and I hope that as the work increases, the judicial aptitude and skill of our Officers will also so increase, that they will more than keep pace with it. If the examination of the witnesses before the Judge be accepted, I am quite confident that his taking proper English notes causes very little or no additional delay. The notes involve a certain labor but no time, and I think that once the habit and knack of taking good notes (sufficient, and not too much, all the essential, and none of the irrelevant parts of the evidence) is acquired, the labor will be more than repaid to the Judge himself by the facility and confidence given to his proceedings as the case goes on. It is rather the labor of pumping the witnesses which, combined with the note taking, may sometimes make the labor heavy, the same man being at the same time Counsel for both sides, Judge and Reporter; but this is in fact an evil inevitable to our system of dealing direct without the intervention of professional agents, and it is counterbalanced by many advantages in our practice. As things advance, it may be that some day when the memory of the old Izhar Nuveeses is gone, and their traditions lost, a real reporter may be allowed in some heavy cases, and prosecutors appointed to aid the Judge in conflicts with Counsel for prisoners.

I very much feel that nothing can be so prejudicial to the interests of justice as to work our Officers so hard, that their duties become irksome, and that they acquire a tendency to shirk thorough investigation. Meantime I confidently recommend our reform in the system of taking evidence."

He need not tell the Committee that Mr. George Campbell, the author of the report, from which the extracts which he had just read were taken, was no mere theorist, but an able, intelligent, and experienced Judge, whose deliberate opinion, after a fair trial of the system described by him, was entitled to much weight. The same system had also been introduced into the Punjab. He had not been able to ascertain to what extent it was in force there; but he was assured by a very able Punjab Officer now in Calcutta, that it was working admirably and giving very general satisfaction. Under these circumstances, he should be very sorry to see any law passed, which should put a stop to the system in the Punjab and in Oude and in other parts of India, where it was in force; he would far rather make provision in the present Code for the gradual introduction of the system throughout the country. The Section now proposed aimed at this, and after carefully considering all the arguments for and against the introduction of the Section, he hoped that the Committee would agree with him and allow the Section to be introduced. The Honorable the Lieutenant-Governor of Bengal had lately addressed the Council, advocating some relaxation of the rule contained in Section 162, and he believed that the proposed new Section would fully meet His Honor's views. He feared that he had detained the Committee much longer than he ought to have done, for which he begged to apologise, but there was one other remark which he wished to make before he resumed his seat. The Honorable and learned Judge opposite (Sir Charles Jackson) told them at the last meeting of the Committee, that notwithstanding all that had been done to put a stop to the practice, he understood it was still the custom in some Courts to allow the evidence of more witnesses than one to be recorded at the same time. The Honorable and learned Judge had mentioned no particular Courts, and had not stated on what authority he had asserted the fact, but he (Mr. Harington) felt assured that the Honorable and learned Judge would not have

Mr. Harington

made such a statement until he had satisfied himself that there were grounds for it. He (Mr. Harington) was certainly not in a position to deny the statement. Taking it for granted then that what had been mentioned by the Honorable and learned Judge, was the case, he (Mr. Harington) believed that the rule, proposed by him, would prove much more effectual in putting a stop to the highly objectionable and positively illegal practice complained of than any amount of checks and safeguards such as that introduced into Section 162 at the lasting Meeting of the Committee, and he confidently calculated on the vote of the Honorable and learned Judge in favor of his present Motion. He begged to move that the Section be added to the Bill.

MR. ERSKINE said, it appeared to him that the Section now proposed would in fact create a power of dispensing at will with one-half of the precautions devised at their last meeting to prevent slovenly habits of taking evidence; and which, after a very long discussion, had been embodied in the preceding Section. This proposal he thought would undo the greater part of the work accomplished on Saturday last. Especially it re-opened the whole question as to the propriety of requiring the depositions of witnesses to be invariably written down in their own words and signed with their own hands before attestation by the Magistrate; as well as the question of retaining a well kept Vernacular record when the Magistrate's own notes were in another language. He would not again enter into any discussion on those points; for all the arguments had been so fully stated and re-stated at their last meeting that they must be fresh in the recollection of every one. He was obliged to confess, however, that nothing he had heard at all altered his opinion that, if the record of each witness' statement in his own words were to be dispensed with, very great inconvenience might arise; especially in dealing with cases of perjury and in revisions of proceedings on appeals. One other minor difficulty occurred to him at once. In the Bombay Presidency it had often been the case that a subordinate Magistrate, whose Vernacular language was Mahrattee, was employed in a district wherein the common language was Guzerattee. In such cases, under the Section now proposed, the record would have to be kept in Mahrattee—although that would not be the language of the accused or of the public or of the appellate authority. Surely, such a procedure could not be defended. He quite concurred with the Honorable Member who had last spoken in feeling that much weight was due to the opinions of able men like Mr. Campbell, and he hoped that one part of his plan might hereafter become practicable. But after all, in deciding on a question of this kind, those who had long experience of the working of any system must generally be guided in the main by the results of that experience. And, fearing as he did, that the alterations now proposed were calculated to affect injuriously the practice with which he was familiar, and which worked well in Bombay, he could not but object to them decidedly.

MR. HARINGTON said that it might have the effect of shortening the present discussion, if he mentioned at once that, in the cases to which the Section proposed by him would be applicable, there could be no appeal. The Chapter, on which they were now engaged, and into which it was proposed to introduce the new Section, related only to the preliminary enquiry by the Magistrate in cases triable by the Court of Sessions.

MR. ERSKINE said, he was much obliged to the Honorable Member for alluding to this point, as he believed there must be some misapprehension regarding it. In many cases it would not be in the power of the Magistrate who made the preliminary enquiry to satisfy himself, until his inquiry was nearly completed, whether he should commit an accused person for trial or punish him himself. If the Magistrate in such a case should decide to punish the accused person, there might be an

appeal from his decision, but there would be no Vernacular record.

MR. FORBES said, the Honorable Member for Bombay had given two grounds on which he was opposed to the Section which it was not now proposed to introduce; one was, that the deponent would not be able to sign the Judge's note of his evidence, and another that a Magistrate, whose own language was, for instance, Guzerattee, might be employed in a Province where the people ordinarily spoke Mahrattah. As regarded the first objection, he (Mr. Forbes) did not see why a deponent's signature should not be taken to the evidence as taken down by the presiding Judge. In the Supreme Court, he (Mr. Forbes) believed that all evidence was taken down in English by the Registrar, and that the signature of each witness was then taken to the Registrar's copy of the evidence, on its being translated to him; and if it be necessary that the deponent's signature should be taken, it might be taken in the manner now in force in the Supreme Court. As regarded the objection that the language of the Judge might be Guzerattee, and the language of the district Mahrattah, it must be remembered that the Section was so worded, as to leave it discretional with the local Government to introduce its provisions into any district or part of a district that they pleased, and it must be presumed that the Government would not introduce it in places where there existed any sufficient ground against it.

SIR BARTLE FRERE said, he would beg to ask the Honorable Member for the North-Western Provinces the difference which, in his opinion, existed between the practice legalized in the Section adopted last Saturday, and the system to which Mr. George Campbell referred in his report, from which an extract had just been read, as the ultimate step in the reform recommended by him, namely, the appointment of an official reporter to each Court. It seemed to him (Sir Bartle Frere) that the Section which was passed on Saturday last, legalized the exact system which Mr. Campbell wished to see ultimately introduced. Each witness would be heard separately, and the substance of his evidence would be taken down at the time by the Magistrate in his own vernacular and in his own hand-writing. But there would be, besides, a man, the official reporter, who would be engaged at the same time in taking down the evidence as nearly as possible in the very words of the witness himself, and who would probably take the signature of the witness to the deposition, a point which was justly considered by the Honorable Member for Bombay an essential safeguard in any serious case.

MR. HARINGTON said, he did not understand Mr. Campbell to look to the restoration, at any future period, of the mode of taking evidence which was formerly followed in the Oude Criminal Courts when an officer of the Court, sitting apart from the presiding Judge, took notes of the evidence as it was being reduced into writing by the Court. Mr. Campbell seemed to be fully sensible of the great advantage of a well conducted public press in watching, and by means of its own reporter, reporting the proceedings of the Criminal Courts, and he went entirely with Mr. Campbell on that point. There could be no doubt that an honest and well conducted press exercised a powerful influence for good in respect to the proceedings of Courts of Justice. It gave publicity to their proceedings and threw a light upon them, which in its effect must be highly beneficial and was most desirable. He was led to think that Mr. Campbell would be glad to see a newspaper reporter in attendance upon every Court in Oude, but that of course was out of the question. What, as a substitute, Mr. Campbell seemed to desire, was, that an official reporter should be attached to every Court, whose duty it would be to do very much what was now done by the newspaper reporters. In the Supreme Courts of Judicature and in the Courts at home, Counsel, learned in the law, were usually employed for the prosecution and the defence, who, equally with the presiding Judge, made notes of the evidence as the examination of each witness proceeded, and

when any doubt or difference of opinion arose as to what a particular witness had said, either when the Judge was delivering his charge or at any other time, he believed these notes were referred to, and compared one with another, and any objection taken, was overruled or admitted in reference to what appeared therein. In the Oude Criminal Courts, as already noticed, they formerly adopted the plan which certainly was a very clumsy one, of employing a native Mohurrir to watch their proceedings, and to act as some kind of check upon them, but, as he had mentioned, this officer did not sit with or near the presiding Judge, but in the language of Mr. Campbell's report, in an obscure corner of the Court house, where he carried on his work by himself. He did not understand Mr. Campbell in what he said about a reporter, to have any wish to return to that state of things, or to alter the present practice according to which the notes taken by the Judge or Magistrate of what each witness deposed, constituted the record of the evidence.

MR. SETON-KARR said that, as he understood this question, he thought it necessary to add his testimony to what had fallen from the Honorable Member for the North-Western Provinces. Wherever the system had been tried in the Non-Regulation Provinces under the Government of Bengal, it had given satisfaction and had been found to work with success. As he read the Section, it was not compulsory but permissive, and it only vested the local Government with the discretion to introduce the new plan wherever it thought fit; and as it appeared to him that the arguments preponderated in favor of the Section, he should willingly vote with the Honorable Member in support of it.

There were, however, one or two points which had been urged, in regard to which he desired to say a few words. It had been urged that a witness ought not to be asked to sign a deposition, unless it were taken down in a language which he could understand. But practically, hitherto, witnesses in many cases had really affixed their names or their mark to depositions taken in a language which was equally foreign to them, namely, the language of the native Mohurir, which was one peculiar to the Courts. It was not the language of the educated, nor was it the language of the uneducated, but it was a strange and stereotyped language in use only within the walls of Courts. If it were thought necessary that the witness should be required to sign depositions taken down in a language other than his own, this would in reality not be much of a deviation from the existing practice. But it might not be necessary to compel or ask witnesses so to sign at all, under the amended Section. Still further it had been noticed that, if the Section were not amended so as to regulate the practice of Non-Regulation districts, it might imperil the very introduction of the Code into such districts, or cause a retrogression instead of an advance, and it was most important that no omission of the kind to be supplied by the amendment should hinder the extension of the Code everywhere.

There was only one other remark which he would make, and that was with reference to the provision requiring the Magistrate to record such remarks as he thought material respecting the demeanor of any witness while under examination. The intention of the provision was, no doubt, good, but it would be very liable to abuse, and would leave a large opening for bias and prejudice on the part of hasty young officers, so that he would recommend its omission; but with that exception, he should vote in favor of the proposed amendment.

SIR BARTLE FRERE said, after having read Mr. Campbell's remarks about an official reporter, he had come to the conclusion that the official reporter he proposed to retain was the Vernacular reporter to take down evidence in the language in which it was given, and to take it down in a more full manner than would be done by the Magistrate. He (Sir Bartle Frere) thought that this system would be a very great improvement on what

was stated to be the practice in many parts of this side of India. But he must protest against its being considered necessary or an improvement on the practice in other parts of India. He would appeal to his Honorable friend opposite, the Member for Bombay, who had had great experience as a Magistrate and a Judge in the Bombay Presidency, as to the common practice in that Presidency, and he believed it was the same in Madras. The evidence was always given orally without the aid of an interpreter, one witness only being heard at a time, and a note of the evidence taken down in the vernacular by a native reporter at the time, as spoken. In any serious case the Judge almost invariably also took his own note of the evidence in his own language and handwriting, and had no occasion to refer to any other record. Whatever might have been the practice in former days—and he (Sir Bartle Frere) could recollect great laxity in that respect—he felt sure his Honorable friend could recollect no other system than that he had described, which was very nearly the one they had embodied in the Clause passed on Saturday last.

The Section now proposed was merely permissive, and agreeing in much which had fallen from the Honorable Member for Bengal, he thought that the power might be very properly entrusted to the local Governments or other Executive Officers vested with the administration of Non-Regulation Provinces to which the Code might be extended. He (Sir Bartle Frere) differed, however, from the Honorable Member for Bengal with regard to the provision allowing the Magistrate to record any remarks he thought necessary respecting the demeanor of a witness whilst under examination. Whatever the prejudices of the Magistrate might be, he (Sir Bartle Frere) thought it better that the Magistrate should be allowed to record whatever he had to say on the subject.

For these reasons he should support the insertion of the Clause, as drawn by his Honorable friend.

Sir Bartle Frere

Mr. HARINGTON said, one of the objections made by the Honorable Member for Bombay to the proposed new Section was that it contained no provision for the evidence, taken down in the manner prescribed by the Section, being signed by the witness who gave it; but, as remarked by the Honorable Members for Madras and Bengal, there would be no difficulty in introducing such a provision into the Section to meet this objection if necessary. Considering however that it would often happen that the witness would not understand the language in which the evidence was taken down, and that in most cases he would not be able to read the written record of the evidence, he (Mr. Harington) did not see how the witness could be required to sign the evidence, or what advantage or additional security it would be to him to sign it. Still, if the majority of the Committee thought it right that the evidence should be signed by the witness as well as by the Magistrate, he should not oppose the insertion of a provision to that effect. With regard to what had fallen from the Honorable Member for Bengal in the concluding part of his remarks, relative to the provision requiring the Magistrate to record any remarks which he might think material respecting the demeanor of any witness while under examination, he deemed it sufficient to observe that the provision was taken from the present law of evidence as contained in Act XIX of 1853, and he saw no reason for altering the law in that respect. He might add that a similar provision was contained in the corresponding Section of the Civil Procedure Code passed the year before last.

The CHAIRMAN said, there was considerable difficulty in the question in any view of it, but it was a difficulty which, on account of the numerous languages spoken in the country, could not be avoided. As the Section, however, related only to preliminary investigations before the Magistrate, and proposed to leave it to the discretion of the local Government to extend it to particular places, he was disposed to vote in support

of it with certain amendments. He thought that an English Judge should be allowed to take notes in English, provided the evidence was properly explained to the accused if he did not understand the language of the Court. That was the practice in the Supreme Court. He (the Chairman) was not quite sure, however, that we did right last Saturday in requiring a witness on all occasions to sign his deposition. He thought there could be no advantage in obliging him to do so if he could not read the language in which it was recorded. Section 162, as it now stood, provided that, if the evidence was taken down in a different language from that in which it had been given, or if the witness did not understand the language in which it was taken down, he might require the deposition to be interpreted to him in the language in which it was given, and, when that was done, he would have to put his signature to it. Probably he would be fined for contempt of Court if he refused to sign the deposition, although he might refuse on the ground that he could not read the language in which his deposition was recorded. The same observations applied to a man who, if he could not read and write, which was a very common case in this country, was required to put his mark or cross to his deposition. He therefore thought that it would be necessary and useful to require a witness to sign a deposition only when he understood or could read the language in which it was recorded.

With regard to the case put by the Honorable Member for Bombay, of the language of a witness being Guzerattee, while the language of the Judge was Mahrattee, he (the Chairman) thought that, in such a case, the local Government would not direct the evidence to be taken down in Mahrattee. He would propose, therefore, that the evidence should be taken down in the language of the witness or in the language of the Court, and that in the latter case, instead of having the evidence *explained* to the witness, which was too general an expression, he would require it to be read over and interpreted to him, but he did not think that in such a case the witness ought to be required to sign the deposition. For his own part, he (the Chairman) would not object if his deposition were taken in Bengallee, provided an interpreter interpreted to him what was taken down, but he should not like to sign the deposition, although it had been interpreted to him. He might say he did not know what was written, although he knew what had been interpreted to him.

The only other remark which he had to make was with reference to the objection urged by the Honorable Member for Bengal relative to the provision requiring the Magistrate to record any remarks he thought necessary respecting the demeanor of a witness whilst under examination. Considering that this was a Clause applicable only to preliminary investigations, he entertained the same view as the Honorable Member for Bengal. But the same objection would not apply to evidence taken before a Session Court or before the Magistrate in cases where the Magistrate could pass sentence.

The proposed Section was ultimately passed as follows :—

"It shall be competent to the local Government to direct that in any District or part of a District to which this Act shall extend, or shall hereafter be extended under the provisions of Section 360, the evidence of witnesses shall be taken down by the Magistrate with his own hand, in the Vernacular language of the Magistrate, unless the Magistrate be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. The evidence shall be taken down not ordinarily in the form of question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and shall, if necessary, be corrected. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given. It shall be in the discretion of the Magistrate to take down any particular question and answer, if there shall appear any special reason for so doing, or any person, who is a prosecutor, or a person accused, shall require

it. The evidence so taken down shall be signed by the Magistrate, and shall form part of the record. Provided that if the Vernacular language of the Magistrate be not English, or the language in ordinary use in proceedings before the Court, he may be directed by the local Government to take down the evidence in the English language or in the language in ordinary use in proceedings before the Court instead of his own Vernacular."

THE CHAIRMAN then proposed to go back to Section 162, and moved the omission of the words,

"The Magistrate shall record such remarks as he may think material respecting the demeanor of any witness while under examination."

After some discussion, the Council divided—

Ayes 5.	*Noes* 2.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Sir Bartle Frere.
Mr. Forbes.	
Mr. Harington.	
The Chairman.	

So the Motion was carried.

THE CHAIRMAN then moved the omission from the same Section of the words "and shall be signed by the witness," and said, he proposed to introduce a separate Clause requiring a witness to sign his deposition only when he understood the language in which it was recorded and could read it himself.

MR. ERSKINE said, he did not wish to divide the Council, but he must say he had not felt the full force of the remarks of the Honorable and learned Chairman. The witness would by no means be compromising himself if he signed a deposition although he could not himself read it; because, whether he signed the deposition or not, it was to be evidence on which to convict him of perjury. The question as to signing, therefore, was rather one of procedure; and he believed that a witness who had to sign a deposition, would be more careful to satisfy himself that it was correctly recorded, than one who was not asked to set his hand to it. The Clause, as it stood, provided for a more formal procedure. But although he could not concur in the amendment, he should not detain the Council by calling for a division.

SIR BARTLE FRERE said, whether the deponent could read or not, the mere fact of his being obliged to put even a mark or cross to his deposition had had a most material effect on witnesses. Among the Mahrattas especially, his Honorable friend opposite would remember that, before a witness signed his deposition, he almost invariably asked, "What have you written down?" On the deposition being read over, it was not uncommon for a witness to say, "No, you have mistaken what I said." The mere fact of a witness being required to affix his signature, had the effect of ensuring more perfect accuracy. If the witness could not read and write, he had two witnesses to certify that the evidence had been properly read over to him. He considered the provision which it was proposed should be omitted a very proper safeguard, and should therefore divide the Council on the proposition.

MR. HARINGTON said, he was disposed to agree in the remarks of the Honorable and learned Chairman, as to the inexpediency and indeed impropriety of requiring a witness to sign a deposition not written in a language which he could read and write, or in a language which he understood.

THE CHAIRMAN said, he saw no object in requiring a witness to put a mark or cross to a deposition. It was merely substituting shadows for substance, and he thought that in these days the more shadows were done away with, the better. What was the use of a witness coming and swearing that another witness put a particular mark or cross on a document. A cross or mark would not strengthen the evidence. Suppose a person were brought up for perjury, and he said, "I did put my cross, because the law compelled me to do so, or the Magistrate would have sent me to prison, if I refused;" the case would be decided, not by the cross, but by the evidence of the interpreter.

After some further discussion, the Council divided as follows:—

Ayes 5.	*Noes* 2.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Sir Bartle Frere.
Mr. Forbes.	
Mr. Harington.	
The Chairman.	

So the Motion was carried.

THE CHAIRMAN said, there ought to be some provision as to contradictory statements. He should therefore propose the addition of the following words to the amendment carried on Saturday last:—

"and that the deposition was read over to the witness in a language which he understood (naming the language,) and, if the fact was so, that the witness acknowledged such deposition to be correct. If the witness shall deny the correctness of any deposition when the same is read over to him, the Magistrate may, instead of correcting the deposition, make a Memorandum thereon of the objection made to it by the witness, and shall add such remarks as he may think necessary."

The Motion was carried, and the Section as amended then passed.

After some discussion, the consideration of the new Section, which Mr. Harington undertook to frame, was postponed till Saturday next, it being understood that the Section should be a general one, and applicable alike to Section 162 and the Section to follow Section 162, which was passed to-day.

Section 163 was passed as it stood.

Section 164 related to the examination of the accused person.

SIR CHARLES JACKSON said, he wished the consideration of this and the three following Sections which related to the same subject to be postponed till Saturday next. They raised a very important principle, namely, whether the Magistrate should have power to examine, by way of question and answer, an accused person. When the Bill was before the Council in 1859, he proposed the omission of this Clause, but was defeated on that occasion by a majority of one. As the Council was now differently constituted, he was desirous of again bringing the question before the Council. But as it had only this morning been brought to his notice, that four or five years ago Lord Brougham had introduced a Bill into the House of Lords, with a similar object, which Bill was thrown out, he wished to refer to the debates which took place on that occasion. It was obviously a question on which the Council would gladly avail themselves of all the light that could be brought to bear upon it, and he should therefore move that the consideration of this and the three following Sections be postponed till Saturday next.

Agreed to.

Sections 168 to 170 were passed as they stood.

Section 171 was passed after amendments.

Section 172 was passed as it stood.

Section 173 provided as follows:—

"If it shall appear to a Court of Session at the time of trial, or to the Sudder Court as a Court of reference, that any person who shall have accepted an offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information, it shall be competent to such Court to direct the commitment of such person for trial for the offence in respect of which the pardon was tendered, *and any statement made by such party after the conditional pardon is tendered either before the Magistrate or the Court of Session, may be used as evidence against such person.*"

MR. FORBES moved the omission of all the words in italics at the end of the Section. He said that in the two Sections which immediately preceded the Section now before the Committee, provision was made for tendering a pardon to a person, whose evidence was wanted for the prosecution, but who was himself one of the accused parties, and then this Section provided, that if in the opinion of the Judge of Session, the person had not given all the information he was in possession of, not only might the tender of pardon be withdrawn, and he be put upon his trial, but also that all he had said under the offer of pardon might be used against him at his trial. Now he (Mr. Forbes) was quite ready to

admit that a contract, the terms of which were not kept by one of the parties to it, was not binding on the other party, and that therefore if a pardon were tendered on certain conditions, and those conditions were not adhered to by the party to whom it was tendered, the offer might be withdrawn, but he was of opinion that if that were done, both parties should revert to their original position. But under this Section, both parties would not revert to their original position, for the Magistrate, by having obtained an admission of guilt from the accused, and being able to use it against him, would have obtained a great advantage from the prisoner, while the prisoner would have obtained no advantage from the Magistrate, and as it appeared to him that the words to which he objected were on this account very objectionable, he should move that they be omitted.

SIR CHARLES JACKSON said, he objected to the whole Section.

SIR BARNES PEACOCK thought that, if one of the accused persons accepted an offer of pardon on condition that he would make a full, true, and fair disclosure of all the circumstances within his knowledge relative to the crime committed, and if he then wilfully concealed any material fact which might throw a different light on the whole case, as he himself violated the conditions under which the pardon was tendered to him, it was but fair that he should be put upon his trial, and that the statements he had made should be used in evidence against him. The person to whom the pardon was offered, might, for instance, be the principal party in the commission of the crime, and by concealing the circumstances relative to the part he had taken, he might cause the other parties to be convicted as principals, though they were only accessories. For these reasons, he (the Chairman) thought that, if the conditions under which the pardon was offered were broken, the person ought to be put upon his trial, and have his own statements used against him in evidence.

Mr. Forbes

After some further discussion, the Council divided as follows :—

Ayes 6.	*Noes* 1.
Mr. Seton-Karr.	The Chairman.
Sir Charles Jackson.	
Mr. Erskine.	
Mr. Forbes.	
Mr. Harington.	
Sir Bartle Frere.	

So the Motion was carried.

SIR CHARLES JACKSON then proposed the substitution of the words "either by concealing any fact material to the trial, or by giving false evidence or information respecting any person on his trial," for the words "either by wilfully concealing any thing essential or by giving false evidence or information."

The question being put, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Seton-Karr.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. Erskine.	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived, and the Section, as amended on the Motion of Mr. Forbes, then passed.

Sections 184 to 187 were passed as they stood.

Section 188 provided as follows :—

"When evidence has been given before a Magistrate which appears to be sufficient for the conviction of the accused person of an offence which is triable exclusively by the Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the Court of Session, the accused person shall be sent for trial by the Magistrate before the Court of Session. *If the accused person is a European British subject, he shall be sent for trial before the Supreme Court of Judicature.*"

MR. FORBES said, he thought an important amendment was required in this Section, with reference to the words in italics. In Madras the Tehseeldar had the power to commit for trial before the Criminal Court, but had not power to commit to the Supreme Court, and it occurred to

him that, under the Section as at present worded, some doubt might arise whether it did not give them this latter power, which certainly was not intended.

After some coversation, an amendment was carried, which made the latter part of the Section run as follows :—

"If the Magistrate is a Justice of the Peace, and the accused person is a European British subject, &c."

Section 189 provided as follows :—

"As soon as the charge on which the accused person is to be tried has been prepared, as directed hereinafter, it shall be read to him, and a copy or translation of it shall be furnished to him if he require it. *The accused person shall be at liberty, at any time within forty-eight hours after the reading of the charge, to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the Court of Session or Supreme Court.* The Magistrate shall receive the list, and summon the witnesses to appear before the Court before which the accused person is to be tried. The provisions of Sections 154, 155, 156, 157, 158, and 159, so far as they relate to the attendance of witnesses, shall be applicable to witnesses named by the accused in the list above mentioned."

MR. SETON-KARR said, he thought there was a part in this Section which required amendment. He referred to the part printed above in italics. It appeared to him that, if that provision were allowed to continue as it now stood, the practical effect of it would be that it would defeat the ends of justice by allowing time for tutoring witnesses in cases of affray, dacoity, &c. Instead of those words he would propose that the accused person should be *required* at once to give in a list of his witnesses, but that it should be competent to the Magistrate at his discretion to allow the accused person to give in any further names at any time within twenty-four or forty-eight hours.

MR. HARINGTON said, he did not think the Section was open to the objection which had been taken to it by the Honorable Member for Bengal. It might very well happen that a party, on being committed to take his trial before the Court of Session, could not at once name the witnesses whom he wished to be summoned to give evidence in his behalf before that Court; he might be far from his home and from the friends whom he might wish to consult. No such restriction as that proposed existed in the law as it now stood, and justice required that they should be careful not to throw unnecessary impediments in the way of a person committed to take his trial before the Court of Session, which was a very serious proceeding, defending himself against the charge on which he was to be tried. The question they had to consider was, whether forty-eight hours from the time when the accused was informed of the charge was too long a time to allow him for the purpose of ascertaining and naming the witnesses whom he wished to be summoned by the Magistrate. He (Mr. Harington) did not think it was too long, and he should be sorry to see any change made in the Section as it now stood. If the accused wished to tutor his witnesses, he could do so just as easily after as before they were summoned, or indeed at any time before the trial came on.

THE CHAIRMAN said, he rather agreed with the Honorable Member for Bengal in his suggestion about requiring the accused to give in at once a list of his witnesses, and giving the Magistrate the discretion to allow the accused to give in any additional names afterwards. He thought, however, that there might be cases in which the Magistrate should be allowed to exercise this discretion without reference to time. He did not think that, in some cases, even forty-eight hours would be sufficient, and he would allow a longer period at the discretion of the Magistrate. As a general rule, he thought that the accused should be required at once to give in a list of his witnesses, leaving it discretionary with the Magistrate to allow the accused to give in any further names at any subsequent time.

After some further discussion, an amendment to the above effect was carried, and the Section as amended passed.

THE CHAIRMAN then said, there ought to be some provision to prevent parties from requiring an unnecessarily large number of witnesses to be summoned for the purpose of vexation or delay or of defeating the ends of justice. He should propose the addition of the following new Section after Section 189 :—

"If the Magistrate shall be of opinion that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material, and if the Magistrate be not so satisfied he shall not be bound to summon the witness unless such a sum shall be deposited with the Magistrate as he shall consider necessary to defray the expense of obtaining the attendance of the witness."

Agreed to.

Sections 190 to 204 were passed as they stood.

Section 205 was passed after amendments.

Sections 206 to 208 were passed as they stood.

Section 209 was passed after a verbal amendment.

Sections 210 to 218 were passed as they stood.

Section 219 was struck out as superfluous, on the motion of Mr. Harington.

Sections 220 to 222 were passed as they stood.

Section 223 empowered the Magistrate to dispense with the personal attendance of the accused.

MR. SETON-KARR said, he was anxious that this Section should be carefully considered. The present practice had been to allow the Magistrate on application to grant permission to accused persons to appear, vicariously, through their agents, and if the application were refused, an appeal would be preferred to the Sessions Judge, and then again, if necessary, from him to the Sudder Court. He believed that the practice had led to great irregularities and to much discussion on the subject. He thought that this system of appeal was very objectionable, as it tended to weaken the hands of the Executive Officers. His own opinion was that there should be but one appeal. He would not allow every Magistrate to summon every body without appeal, as some Magistrates might be hasty or inexperienced. But he thought that a Sessions Judge was quite competent to decide in the matter, and if he thought that the attendance of such and such a person was essential, he (Mr Seton-Karr) would have it clearly laid down that there should be no appeal to the Sudder Court.

SIR CHARLES JACKSON suggested that the discussion now raised had better take place on Section 337, which related to the general question of appeals from orders in proceedings other than trials.

MR. HARINGTON said, when this Section was before the Select Committee, they had considered whether there should be an appeal, and the conclusion to which they had come was that an appeal should not be allowed. If an appeal were allowed, he (Mr. Harington) was rather disposed to think that it should be to the Commissioner of the Division and not to the Sessions Judge.

The Section was then passed subject to re-consideration when the Committee came to Section 337.

Section 224 was passed as it stood.

Section 225 provided as follows :—

"It shall be lawful for the Magistrate to direct that, before any summons is issued for the attendance of a witness under the last preceding Section, the person preferring the complaint shall deposit in the hands of the proper officer a sufficient sum for the maintenance of the witness who may be summoned on his application, during his attendance at the Court of such Magistrate, and the Magistrate shall regulate the amount of diet money so required, with reference to the probable period such witness may have to be in attendance, and in the event of the prolonged detention of the witness, shall direct the deposit of any further sum which to the Magistrate may seem requisite If the required deposit be not made within a reasonable time the Magistrate may dismiss the complaint"

SIR CHARLES JACKSON said, he objected to this Section altogether, and would propose its omission.

MR. FORBES said that the Section would, if passed, introduce an entirely

new provision of law in the Madras Presidency, where all process was issued without cost to the parties. He had not himself moved in opposition to the Section, because it was, after all, only permissive, and it would be at the option of the Government of each Presidency to introduce it or not as they pleased. If, however, the Committee divided, he should vote for the omission of the Section.

MR. ERSKINE said, he did not much like the principle of the Section which might be made to press severely on poor complainants. He should vote against it.

THE CHAIRMAN said, it was intended to be a check on frivolous complaints. He thought, however, that it would be putting too much power in the hands of the Magistrate.

The Section was then put and negatived.

Sections 226 to 229 were passed as they stood.

Sections 230 and 231 were postponed till Saturday next on the motion of Mr. Harington who engaged to prepare amendments to correspond with what had been done to-day.

Section 232 was passed as it stood.

Section 233 was passed after amendments; after which the Committee went back to, and made an amendment in Section 26.

Sections 234 and 235 were passed as they stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed:—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

PORT-DUES (CONCAN).

MR. ERSKINE moved that Sir Bartle Frere be requested to take the Bill "for the levy of Port-dues in the Ports of the Concan" to the Governor-General for his assent.

Agreed to.

ROHILCUND.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the Tribunals established under the general Regulations and Acts" to the Governor General for his assent

Agreed to.

PUBLIC CONVEYANCES.

MR. FORBES moved that Mr. Harington and Mr. Seton-Karr be added to the Select Committee on the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

MARKETS.

MR. HARINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill "for regulating the establishment of Markets."

Agreed to.

SALTPETRE.

MR. HARINGTON moved that the Bill "to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof" be referred to a Select Committee consisting of Mr. Laing, Mr. Forbes, Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

The Council adjourned.

Saturday, June 1, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble Major-General Sir R. Napier,
H. B. Harington, Esq.,
H. Forbes, Esq.,
C. J. Erskine, Esq.,
Hon'ble Sir C. R. M. Jackson,
and
W. S. Seton-Karr, Esq.

ROHILCUND ; AND PORT-DUES (CONCAN).

THE VICE-PRESIDENT read Messages informing the Legislative Council, that the Governor-General had assented to the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the General Regulations and Acts," and the Bill "for the levy of Port-Dues in the Ports of the Concan."

CRIMINAL PROCEDURE.

THE CLERK presented to the Council a Petition of the Landholders and Commercial Association of British India praying, with reference to a recent amendment in the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter", that as at present it shall continue to be the law that no British born subject of Her Majesty shall be amenable to be committed for trial to the Supreme Court by a Justice of the Peace in the Mofussil, unless such Justice of the Peace be a Covenanted Servant or British born subject.

MR. HARINGTON moved that the Clerk be requested to read the above Petition at the table, when the Council went into Committee on the Bill.

Agreed to.

BREACH OF CONTRACT.

THE CLERK presented a Petition from certain Ryots of Amber and other villages in the Sonthal Pergunnahs against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

PUBLIC CONVEYANCES.

MR. ERSKINE presented to the Council a communication from the Bombay Government relative to the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca", and moved that it be printed and referred to the Select Committee on the Bill.

Agreed to.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The Petition from the Landholders' and Commercial Association of British India, which was presented this day, having been read by the Clerk—

MR. HARINGTON moved that the Petition be printed, and in making the Motion he wished to observe, what was well known to every Honorable Member present, that, under the law as it now stood, only European British subjects could hold the office of Justice of the Peace in the Mofussil or beyond the limits of the Presidency Towns. The Natives of India were not eligible to the office of Justice of the Peace in the Mofussil, and he (Mr. Harington) had no knowledge of any intention either at home or in this country to propose any alteration in the existing law in respect to the office of Justice of the Peace in India, nor had he any reason to believe that any such alteration was in contemplation. It was scarcely necessary for him to say that no law that this Council might pass could be binding on any future Legislature, much less upon the House of Commons, which was what the Petitioners seemed to contemplate.

Agreed to.

MR. HARINGTON said, on Saturday last he undertook, at the request of the Committee, to prepare a series of Sections to take the place of Section 162 and the new Section which was introduced on his motion immediately after that Section, and he had now the honor to move that these two Sections be struck out of the Bill, and that the Sections prepared by him, copies of which he had caused to be circulated to Honorable Members in the early part of the week, be substituted for them. He trusted it would be found that in preparing these Sections he had followed the letter of what might be called his instructions :—

(a). "The evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate, and shall be signed by the Magistrate. When the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand. In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the exmination of each witness proceeds, to make a memorandun of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

(b.) It shall be competent to the Local Government to direct that in any District or part of a District to which this Act shall extend, or shall hereafter be extended under the provisions of Section 360, the evidence of witnesses shall be taken down in the vernacular language of the Magistrate, unless the Magistrate be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. The evidence so taken down shall be signed by the Magistrate, and form part of the record. Provided that if the vernacular language of the Magistrate be not English, or the language in ordinary use in proceedings before the Court, the Magistrate may be directed by the Local Government to take down the evidence in the English language or in the language in ordinary use in proceedings before the Court instead of his own vernacular.

(c). The evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative. It shall be in the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing or any person who is a prosecutor or a person accused shall require it. When the evidence is completed it shall be read over to the witness in the presence of the person accused, if in attendance, or of his agent when his personal attendance is dispensed with and he appears by agent and shall, if necessary, be corrected. If the witness shall deny the correctness of any part of the evidence when the same is read over to him, the Magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he may think necessary. If the evidence be taken down in a different language from that in which has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

(d.) A memorandum to be signed by the Magistrate shall be attached to the evidence of each witness, and shall state that the evidence was read over to the witness in a language which he understands [naming the language] and, if the fact is so, that the witness acknowledges such evidence to be correct. When the evidence is not taken down by the Magistrate with his own hand the memorandum shall further state that the evidence was taken down in the presence and hearing of the Magistrate, and under his personal direction and superintendence."

MR. SETON-KARR would ask the Honorable Member, with reference to Section (*a*), whether it had occurred to him that, if both the memorandum of the Magistrate and the deposition of the witness were to *form part of the record,* this difficulty might not arise, namely : In case of a difference between the two, which was to be regarded as the genuine and authentic document, and on which could the Appellate Court depend ?

MR. HARINGTON said, the point noticed by the Honorable Member for Bengal had not been overlooked by him. He presumed that the evidence taken down in detail in the language of the District, as required by the first part of the Section, would be regarded as the evidence in the case, and that the decision of the Court would be passed in reference to what appeared therein. In like manner, he presumed that, in the event of an appeal, it would be the duty of the Appellate Court to look to this evidence, and to base its

judgment upon it and not upon the memorandum of the substance of the evidence which the presiding officer was required to make, as the examination of each witness proceeded, when the detailed evidence was not taken down by that officer with his own hand. The memorandum was not intended to be a complete record of the evidence. It was required to be made with the sole object of preventing the presiding officer from attending to other business while a witness was undergoing examination before him and of compelling him to give his attention to what the witness was deposing—in other words, to conduct the examination himself.

MR. ERSKINE moved the omission of the words "When the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand," and the substitution of the following :—

"When the evidence of a witness is given in English, and the Magistrate takes it down in that language with his own hand, an authenticated translation of the same shall form part of the record."

He instanced the case of medical evidence taken in English by the Magistrate, and thought it very desirable that an accurate translation of all evidence so taken should form part of the record.

MR. HARINGTON said, the object of the Honorable Member for Bombay would not be attained if the amendment was worded as proposed by him. The Honorable Member proposed to confine the translation of evidence taken in English to such evidence when taken down by the Magistrate with his own hand, but a translation would be just as necessary when the evidence was taken down in English by any other person, say by the Magistrate's Clerk.

MR. ERSKINE said, he had no objection to omit the words "and the Magistrate takes it down in that language with his own hand," so as to make his amendment run as follows :—

"When the evidence of a witness is given in English, an authenticated translation of the same shall form part of the record.

Mr. Harington

MR. HARINGTON said, if the words proposed to be omitted were omitted, no power would remain to take down evidence in the English language. The earlier part of the Section required that all evidence should be taken down in the language of the District, but an exception was afterwards made in favor of evidence given in English which it was clearly desirable to retain. The object really aimed at in this part of the Section was, not that the Magistrate should take down all evidence given in English with his own hand but that he should have power to record evidence given in English in that language, the former part of the Section notwithstanding.

THE CHAIRMAN said, what he understood the amendment of the Honorable Member for Bombay to mean was that, when evidence was given in English, a translation of it should form part of the record. He (the Chairman) would suggest that the object of the Honorable Member might be better attained by allowing the words proposed to be omitted to stand, and by adding the words "and an authenticated translation of the same shall form part of the record." He thought it proper, however, to call attention to the fact that, if the amendment were carried, there would still remain this difficulty—whether the translation should be in the language of the Court or the language of the District.

MR. ERSKINE then withdrew his amendment, and moved instead that the following words be inserted after the words before proposed by him to be omitted :—

"and an authenticated translation of the same in the language in ordinary use in the District in which the Court is held shall form part of the record."

MR. HARINGTON moved that the word "Court" be substituted for the word "District" in the amendment last proposed by the Honorable Member for Bombay. He observed that the word used by the Honorable Member for Bombay was no doubt in

conformity with the alteration which had been made, as he (Mr. Harington) thought erroneously, at a former meeting of the Committee, in that part of the Section which declared that the evidence of witnesses should be taken down in the language "in ordinary use in proceedings before the Court," for which the words "in the District in which the Court is situated" had been substituted. The words, as they originally stood, contained a clear and well defined rule which could not, he thought, be said of the words which had been substituted. As regarded many Districts in which more languages than one were current, it would often be difficult to say what was the language of the District. Who could say what was the language of Calcutta? It was not his intention to move that the original words be restored, but if any other Honorable Member would make the motion, he (Mr. Harington) would support it with much satisfaction. His present motion had reference only to the amendment proposed by the Honorable Member for Bombay.

SIR BARTLE FRERE said, he had not the least objection to the amendment of his Honorable friend, provided he would propose a Section declaring that, with the exception of Her Majesty's Supreme Courts, where the English language was understood by the practitioners, the language of the Court should be the language of the District. He entertained very strong objections to a language which was not the language of the District, nor of the practitioners, nor of the Judge, but the language of some of the officers of the Court, being selected as the official language of the Court. If his Honorable friend would insert a Section to the effect above referred to, so as to secure throughout India the language of the Court being the language of the District in which it was situated, he should not object to the amendment.

MR. HARINGTON said, the rule in Bombay was contained in Section XXXVI Regulation IV. 1827, which provided as follows:—

"*First.*—The deposition of each witness shall be taken down in writing by the Serishtadar or other Officer of Court, in the language and character used in the Court, and when completed, it shall be signed by the witness with his name or mark, and shall be authenticated by the Court.

Second.—But if the language used in the Court is not familiarly known to the witness, his deposition shall be taken in the language best known to him, for which an interpreter can be found."

That was common sense and had been the law in Bombay upwards of thirty years. He admitted that the Regulation just quoted applied only to the Civil Courts, but he believed that the same rule was observed in the Criminal Courts, and he would ask the Honorable Member of Government on his left (Sir Bartle Frere) whether any inconvenience had been found to result from the operation of the law, or whether any of the local officers had complained of the law. The Section, as settled in Committee, corresponded almost exactly with the Bombay law. First it required that the evidence should be taken down in the language of the Court, and then it provided that, if the evidence was taken down in a different language from that in which it was given, and the witness did not understand the language in which it was taken down, he might require his deposition as taken down to be interpreted to him in the language in which it was given.

SIR BARTLE FRERE said, he was very much obliged to his Honorable friend for having given him the opportunity of explaining. Before the passing of the Bombay Code, which was the work mainly of Mr. Elphinstone and the eminent men whom he employed, the language of the Courts was Persian. It was not understood by the prisoner or the witnesses, and was very imperfectly known by the Judges. After that, the Guzerattee was introduced in Guzerat, and Mahratta in the Deccan and Concan and Southern Mahratta Country. Then it was found that, in many of the Southern Districts, Canarese was the current language, a language as different from Mahratta as Welch was from English. But the Governor of that day, Sir Robert Grant, took

great pains to make the officials learn Canarese, which he fixed as the official language of those districts, and thus effectually brought about what was found to be a most popular and useful reformation, namely, that any inhabitant of the District who came into Court could understand what was going on. There were very few measures which were better understood by the people and which better ensured the popularity of the Government. Latterly, in Sind, Persian was at first the language of the Courts, but as it was imperfectly understood, it was abolished, and Sindee was substituted for it. He believed now, that, with the exception of the Presidency Town, there was not any part of the Bombay Presidency where the language of the Court was not the language in common use in the District. He believed the same was the case in Madras, from which Presidency, indeed, Bombay derived great assistance when Canarese was made the language of the Courts, and where it had always been the rule to make the mother tongue of the people, the language of the Courts.

He would repeat that he should have no objection to the proposed amendment provided some such provision, as that suggested by his Honorable friend, the Member for Bombay, were adopted.

MR. FORBES said that, by the Bengal Act XXIX of 1837, power was given to

> "the Governor-General of India in Council, by an Order in Council, to dispense either generally, or within such local limits as may to him seem meet, with any provision of any Regulation of the Bengal Code, which enjoins the use of the Persian language in any judicial proceeding or in any proceeding relating to the Revenue, and to prescribe the language and character to be used in such proceedings."

He thought that a similar provision might be introduced into this Code empowering the Local Governments to declare what should be the language of the Courts subordinate to them respectively.

SIR CHARLES JACKSON said, he had another objection to the amendment of the Honorable Member for the North-Western Provinces. It appeared to him to be an amendment which affected the regularity of their proceedings. When this question was considered on Saturday last, the Council had a long debate upon it, at the close of which they came to a division. But the Honorable Member had now re-opened the whole question. It was quite clear that a Member in Committee could speak as often as he pleased; but he had never heard that it was competent to a Member, when beaten on a question, to move it again.

MR. HARINGTON contended that he was quite in order in the Motion which he had just made. The Honorable Member for Bombay had proposed the addition of certain words to one of the Sections, which it was proposed to substitute for Sections previously settled by the Committee. A word occurred in the proposed addition which appeared to him (Mr. Harington) to be a wrong word, and he submitted that under the Standing Orders he had a perfect right to move, as an amendment, that any word which he preferred should be substituted, and to offer any remarks which he thought proper in support of his amendment.

SIR CHARLES JACKSON said, however that might be, the proposed alteration raised the same question.

MR. HARINGTON resumed. Supposing such to be the case, it in no way affected his right to move the amendment which he had proposed. If any other amendment in the Section was moved by any other Honorable Member, he reserved to himself the right of moving any amendment thereon that he might deem proper, without reference to what might have taken place on previous occasions.

THE CHAIRMAN said, the case stood thus: The Honorable Member for the North-Western Provinces had moved a Section in amendment of Section 162. He had framed the Clause at the request of the Council, in accordance with the views which they entertained. It could hardly be said, therefore, that the question had

been determined. If Section 162 had, by common consent, been struck out, for the purpose of substituting other words, it could hardly be said that the Honorable Member was prevented from proposing any amendment on the words proposed to be substituted. With reference to the objection of the Honorable and learned Judge, he (the Chairman) did not think it wise and expedient generally, after a question had once been discussed and decided by the Council, that it should be reopened. But it might be that, owing to human inadvertence, there might be an omission to put it in the proper form. Under all the circumstances of the case, therefore, he thought that it was open to the Honorable Member for the North-Western Provinces to press his Motion, if he desired to do so. His (the Chairman's) attention had been drawn to a similar question raised in December 1858, in reference to an amendment proposed by Mr. Ricketts, on which occasion the Vice-President of the day (Sir James Colvile) was reported to have made the following remarks :—

"The Vice-President thought that it would be very unwise for the Council to lay down a rule against reconsidering a matter on which a vote had once been taken. Their object was to make their Bills as perfect as possible ; and upon many subjects of debate, Honorable Members might be found to alter the opinion which they had previously expressed The question, however, could not now be said to have arisen here, for the Honorable Member's proposed amendment was different from that upon which the Council had voted at the last Meeting."

MR. HARINGTON said, he had come down to the Council to-day with no intention of re-opening the question as to the language in which the evidence of witnesses should be recorded. He was asked by the Committee to prepare certain Sections to take the place of two Sections which were ordered to stand part of the Bill at the last meeting of the Committee. He had done as he was asked, and he had proposed to-day to confine himself to moving the adoption of the Sections prepared by him without any comments. When, however, the Honorable Member for Bombay moved an addition to the first of the Sections prepared by him (Mr. Harington), and he found therein a word which seemed to him to be wrong, he certainly did express an opinion that the Committee had made a mistake in substituting the language of the District for the language of the Court, but he at the same time expressly stated that although if any other Honorable Member would move that the original words be restored he would gladly support the Motion, he had no intention of making such a Motion himself. What had fallen from the Honorable and learned Vice-President to-day in favor of the Section as it originally stood, greatly strengthened his opinion that, in altering the words to which he was referring, the Committee had committed an error from which much inconvenience might ensue, and he believed that it would be the most straightforward course for him to move that the original words be put back. He begged to make a Motion to that effect. He might add that he should have no objection to the insertion of words, giving to the local Governments the power of declaring what should be the language of the Courts.

THE CHAIRMAN said, he would put the question to the vote to strike out the words "in ordinary use in the District in which the Court is held," and substitute the words "in ordinary use in proceedings before the Court." In doing so, however, he would observe that, supposing the Motion to be carried, it would not decide the question as to the language in which the proceedings before the Court were to be recorded. He would recommend the adoption of the suggestion made by the Honorable Member for Madras, of giving the local Governments the discretion to declare what the language of the Courts should be. Otherwise it would be still unknown what the language of the Court was.

MR. FORBES said, if the amendment of the Honorable Member for

the North-Western Provinces were carried, he would move the introduction of a Section empowering the local Governments to declare what the language of the Courts should be.

SIR BARTLE FRERE asked, if the Honorable Member for the North-Western Provinces would object to let them consider the Clause proposed to be introduced by the Honorable Member for Madras, before coming to a decision on the amendment now before the Committee. His (Sir Bartle Frere's) vote on the latter would depend on the tenor of the former. For his own part, he would propose a Clause to the following effect :—

"The language of the Court shall be the language which shall be declared by the Government to be the language of a majority of the inhabitants of the District in which such Court is situated. Provided that it shall always be competent to the Government to direct that the English language shall be the language of the Court."

MR. HARINGTON said, he could have no objection to their considering any Section which the Honorable Member for Madras might propose for fixing what should be the language of the Courts, before they proceeded farther with the consideration of the Section now before the Committee. The proviso which the Honorable Member of Government stated it to be his intention to move, to the effect that the Government should have power to direct that the language of any Court should be English, would have his (Mr. Harington's) hearty concurrence. The Honorable Member for Bombay seemed to be afraid that the Government might proceed too hastily in introducing the English language as the language of the Courts. He (Mr. Harington) entertained no such apprehension. He felt satisfied that the Government would act cautiously in the matter, and that they would not direct that the English language should be used in any Court until they felt convinced that it might safely be introduced. When this was the case, he (Mr. Harington) had no doubt that there would be a great advantage in the use of the English language. With regard to the condition which the Honorable Member of Government (Sir Bartle Frere) would impose upon the Government, he would only observe that he did not consider any such condition necessary. For many years, Persian was the language of the Courts on this side of India, but that being a foreign language, it was felt that it ought not to be retained, and, accordingly, the Act which had been referred to by the Honorable Member for Madras was passed. This Act left it to the Governor-General in Council to prescribe the language and character to be used in judicial proceedings, and authorized the Governor-General in Council to delegate the power thereby given to him to any subordinate Government. The Act which was passed in 1837 had been in force nearly twenty-five years, and during this long interval no one had ever heard of the power which it conferred being abused. For his own part, he was quite willing to trust the local Governments. He could see no necessity for imposing any restrictions upon them or for fettering them in any way in the exercise of any discretion which might be given to them for fixing the language of the Courts.

MR. HARINGTON'S amendment being put, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Forbes.	Mr. Seton-Karr.
Mr. Harington.	Sir Charles Jackson.
The Chairman.	Mr. Erskine.
	Sir Robert Napier.
	Sir Bartle Frere.

So the Motion was negatived.

MR. ERSKINE'S amendment was put and carried, and Section (*a*) as amended then passed.

Section (*b*) was passed after amendments.

MR. ERSKINE moved the introduction of the following new Section after the above :—

"If any question shall arise as to what is the language in ordinary use in any district in which a Court is held, that question shall for the purposes of this Act be determined by the Local Government."

Agreed to.

Sections (*c*) and (*d*) were passed after amendments.

THE CHAIRMAN then proposed the introduction of the following new Section after the above :—

"If the evidence is given in a language not understood by the accused, it shall be interpreted to him in open Court in a language understood by him in all cases where the accused is present in person. If the accused appears by agent and evidence is given in a language other than the language in ordinary use in the District in which the Court is held, it shall be interpreted to him in that language."

Agreed to.

Section 164 provided as follows :—

"It shall be in the discretion of the Magistrate from time to time at any stage of the enquiry to examine the accused person, and to put such questions to him as he may consider necessary. It shall be in the option of the accused person to answer such questions."

SIR CHARLES JACKSON said he hoped he should not be considered pertinacious in bringing this Section once more before the Council. He did so in 1859 when he was beaten by a majority of one. But as the Council was now differently constituted, he hoped for better success. It certainly was a grave question, whether a Magistrate or Judge should have the power to examine a prisoner by question and answer on the facts of the case. He said Magistrate or Judge, for, although the present Section related only to preliminary enquiries by the Magistrates, he proposed to argue the whole question now, as he did not intend to re-open the discussion when the subsequent Clauses relating to Judges came before the Committee. He should address his observations to the whole question, whether Judicial Officers should be invested with such a power. He thought that a little consideration would show the Council that this was a very alarming change in the administration of justice. It was urged by those who supported this *innovation*, that the great object in a criminal trial was to get at the truth, and that the examination of the prisoner was one of the best means of getting at the truth. The principal object in a criminal trial was certainly correctly stated, but it was not every good object which justified the means adopted to attain it. The sight of a pair of thumb-screws, or the application of torture, might be an efficient means of elucidating the truth. He thought, however, that they should all deem truth itself to be dearly purchased by the use of such means, or even at the expense of the moral torture which he contended the cross-examination of a Judge would amount to. But he denied that the examination of a prisoner by question and answer did afford the best, or even a fair or just means of attaining the truth. Now was it a fair means of getting at the truth? The parties to this logomachy were the Judge and the prisoner. Were they in an equal position? What was the position of the Judge? He was a person, if not a lawyer, acquainted with the practice of Courts and the modes of examination; he would feel no anxiety to please, neither would he fear or dread his opponent; his mind would be distracted by no personal considerations, except, perhaps, that his intellects would be sharpened by the desire of showing his skill in obtaining some confession, or some admission of circumstances tantamount to a confession, from the prisoner. Now, on the other hand, what was the position of the prisoner during this contest? He would be totally ignorant of the practice of the Courts and their mode of examination; his mind would be distracted with care and anxiety, and he would often be unable to understand the full bearing of the questions, and he would be in personal fear of the Judge who would no longer be looked upon as an impartial protector, but as an unrelenting prosecutor. This proposition, in fact, made every prisoner his own advocate. Even in civil cases, it was proverbial that, if a man pleaded his own case, he had a fool for his client. With how much greater force did that proverb apply to the case of a criminal, distracted by fear and anxiety as to his fate, and knowing that his life or detention in prison depended on the impression which he might

make on the Judge at the time? The consequence would be that in the great majority of cases the prisoner would say anything, or resort to any expedient, to meet the present difficulty suggested by the question of the Judge. That was the case in France, and it would be much more so in this country. Here, at all events, the prisoner would be sure to envelope himself in a cloud of lies, and then he would be disbelieved and convicted on his own erroneous statements. But then it might be said, who would pity him? But surely such reasoning was not logical; you would not convict a man of the crime of murder, because he told lies in his defence. Then it might be said that some part of his objections were met by the latter Clause of the Section which gave a prisoner the option to answer any questions put to him. He (Sir Charles Jackson) had been a party to the introduction of that Clause, hoping that it might operate so as to mitigate the severity of the enactment; but he now thought that it was quite unnecessary, for it was not to be supposed that the Judge could compel the prisoner to answer any question. There was no process of contempt provided in case of refusal to answer; and if the Judge could postpone the case, keeping the prisoner in confinement in the meantime, it might answer the prisoner's purpose and delay the sentence indefinitely. A similar provision to this would be found in the Bill which Lord Brougham had introduced into the House of Lords. He proposed that the examination of a prisoner should be voluntary. But the fallacy of that proposition was clearly stated by Lord Campbell, who showed that a prisoner would practically be afraid to decline giving an answer from fear of the effect of his taciturnity on the Jury. He would be afraid of the Judge or Jury drawing a presumption of his guilt from his reticence. They would often do so. For instance, there might be a case in which the Judge and Jury entertained a doubt on a particular point. If the prisoner objected to be examined, they might be inclined to say—"I did entertain a doubt on that point, and the prisoner might have solved it, but as he has declined to do so, I shall draw my own conclusion as to his guilt"; and yet the prisoner might have been willing to answer that particular question. Again, persons perfectly innocent of a crime might object to be examined, especially if their general moral character would not stand the test of such an examination. The result would be, as shown by Lord Campbell, that, in process of time, every body would submit himself to this cross-examination.

But that was only one view of the subject. The next point was as to the propriety of the examination being conducted by the Judge, to which he thought there were very grave objections. He thought the tendency of it would be to convert the Judge, who should be impartial, into an unrelenting prosecutor. It would introduce into this country the worst features of the French system, and they would have in this country the same disgusting trials that took place in France. He would have brought down with him the reports of some of those cases, but he was content to rest his case on Lord Brougham's own statement. That noble and learned Lord said—

> "The way in which French Criminal Jurisprudence was conducted, was sufficient to raise the strongest objection to the cross-examination of accused parties. That system was chiefly objectionable from being conducted by the Judge. Any thing more preposterous, cruel, or inhuman, could not be conceived."

That was a statement made by a strenuous supporter of a measure for the examination, by way of question and answer, of an accused person. That was the statement of a noble and learned Lord who had spent half of each of the last twenty years in France, and was intimately acquainted with the nature of the French legal proceedings. Now, if this system had been so pernicious and so bad in France, where they had learned and trained Judges, and where they had a vigilant press and an active public

opinion, how would it work in this country where the Judges were unlearned and untrained, where in fact there was no press or public opinion, and where the Magistrates were young and inexperienced men. If the system were to be introduced at all into this country, he should prefer the system as laid down in the New York Code where the examination of the prisoner was confined to particular questions which were printed in the Code itself. That would be some restraint on the Judge, and would prevent the possibility of such revolting exhibitions as had taken place in France.

These were the chief observations which he had to make upon the subject. He must say that he did distrust this measure altogether, and he hoped that the Council would pause before it introduced so alarming an innovation into the Criminal law of this country. He should move the omission of the Clause.

MR. HARINGTON said, notwithstanding the manner in which the Honorable and learned Judge had attacked him in the debate which took place on an earlier Section, for re-opening the question of the language in which evidence should be recorded, after the decision come to by the Committee upon that question at a former meeting of the Council, he very readily admitted the perfect right of the Honorable and learned Judge to re-open the question which they were now called upon to discuss. He (Mr. Harington) had himself asked the Council on more occasions than one to reconsider its votes, though at the risk of being considered importunate. On one occasion he recollected that he drew down upon himself something like a censure from the Chair for conduct which might have appeared to contain in it the spirit of obstinacy, but nevertheless he persevered, and well was it that he had done so for those who were engaged in what must be regarded as the unfortunate contest now going on in respect to the payment of rent between landlord and tenant and indigo planter and indigo ryot. He did not succeed on that occasion in inducing the Council to restore an important Section of Mr. Currie's Rent Bill which it was proposed to repeal, but he believed he might say that, in consequence of his representations, the Supreme Government, in the exercise of the power vested in them by a Section of the repealing Act, did that by a Resolution which he proposed to do by maintaining the original law. He was, therefore, the last man who ought to complain of the course pursued by the Honorable and learned Jndge on this occasion ; but while he freely admitted the Honorable and learned Judge's right again to open the present question, he must say that he could not consider the ground on which the Honorable and learned Judge had put the course which he was now following a valid or sufficient ground. The Honorable and learned Judge said that the Council was differently constituted from what it was when the Section, as it now stood, was settled by the Select Committee, and that he hoped, therefore, for a different result to his opposition to that Section. But he (Mr. Harington) could not admit that a change in the constitution of the Council afforded any ground for reconsidering a law which had been fully considered and discussed by the Council, and deliberately adopted. He was sure that the Honorable Members, who had joined the Council since the period referred to by the Honorable and learned Judge, would not consider that he intended any disrespect to them in remarking that the Honorable Members who composed the Council when the Section, now under discussion, was settled in 1859 were as competent and as well able to deal with that question as the Honorable Members who at present composed the Council. If a change in the composition of the Council was to be a ground for altering laws deliberately passed, the Council, instead of employing itself in passing new laws rendered necessary by the altered circumstances of the country, would be constantly engaged in revising the laws enacted in former periods. Their laws would have no certainty or fixedness, and no one would have

any confidence in their stability. He would now address himself to the question before the Committee, and he concurred with the Honorable and learned Judge that instead of considering that question merely in reference to the Section before the Committee which applied only to the preliminary enquiry before the Magistrate, it would be better and more convenient to enter at once upon the consideration of the question in its more important bearing, namely, in connection with the trial before the Court of Session, because, if the Committee arrived at the conclusion that the Sessions Judge ought to be allowed to put any question that he thought proper to an accused person on trial before his Court, the arguments in favor of that proceeding would apply *á fortiori* to the Court of the Magistrate whether that Officer was engaged in trying a case or merely in conducting a preliminary investigation. The Honorable and learned Judge seemed to think that they were making an alarming charge in the administration of criminal justice in this country; but he begged to assure him that in so far as the Magistrate was concerned this was not the case, at least on this side of India. Here the Magistrates did examine accused persons and put such questions to them as they judged proper, and that not only during the preliminary enquiry, but upon the subsequent trial if they tried the case themselves. The Section now before them, therefore, proposed nothing new; it merely maintained the existing practice in Bengal, and if they struck the Section out of the Bill he thought they would be making an alteration in the law which might prove very inconvenient and might seriously injure the cause of justice. It could scarcely be necessary for him to say that the sole object aimed at in the provision to which the Honorable and learned Judge demurred, was to promote the ends of justice; and it was clearly the duty of that Council by all legitimate means to do all that lay in its power to secure the accomplishment of that object. The Honorable and learned Judge had alluded to the use of torture. Formerly, and such continued to be the case until a comparatively recent period, tortures of the most horrible kinds for the purpose of extorting confessions from accused persons or of compelling them to tell the truth, were considered even in our own country and in other civilized nations, not incompatible with justice and humanity; and to this day in France, as also noticed by the Honorable and learned Judge, accused persons were subjected to a species of mental torture in the examinations which they underwent with the same object. Happily physical or bodily torture in the case of accused persons was no longer tolerated by any civilized nation, and he certainly had no wish to see the French system introduced into the proceedings of the Criminal Courts in this country. He entirely concurred in Lord Brougham's condemnation of that system contained in the speech from which the Honorable and learned Judge had read an extract. It had been justly remarked in respect of the French system that under it the grave judicial enquiry degenerated into a keen encounter of wits, and that he who should hold the balance steady wielded the sword of the combatant. He repeated, he had no desire to see the French system introduced into this country in substitution for the present mode of trial. But there was a wide difference between the French system, as just described, and the discreet and fair questioning of an accused person by an impartial Judge anxious only to get at the truth on whichever side it lay and whether it should prove favorable or unfavorable to the accused. To such questioning he could see no reasonable objection. To an innocent man, improperly accused of an offence, it might often be of very great benefit in elucidating circumstances by which his innocence might be made to appear and which might not otherwise have come to the knowledge of the Court, and if such examination should ever of itself lead to the conviction and punishment of a guilty man, it did not

Mr. Hurington

appear to him (Mr. Harington) that this would afford any cause for regret. Justice would be satisfied and society protected, though it might be at the expense of what might be called an ancient prejudice. The case seemed to be one in which the end justified the means. He quite concurred in the old English maxim that no one accused of an offence should be looked upon or treated as guilty until he had been found guilty; but he had long questioned the soundness of the English practice according to which every person accused of an offence, from the time he was arrested until he was convicted, though during the whole of the interval he was strongly suspected to be guilty, was recommended by Judge, Magistrate, and Police, not to say any thing by which he might criminate himself. No doubt it would be very desirable if a Judge could avoid taking any part in a trial beyond finding the accused person guilty or innocent, and sentencing him to punishment in the one case and ordering him to be discharged in the other; in other words, if every question which required to be put to the witnesses could be asked by the parties or their counsel, and the case advanced to a complete state of preparedness for decision without any interference or intervention on the part of the Judge. But that was not possible even at home where counsel were generally employed for the prosecution or the defence. In this country it generally happened that the Judge was obliged to act not only as Judge but also as counsel for both sides, and to conduct himself the entire cross-examination of the witnesses. There was no one else who could perform that duty. In the course of such cross-examination it was impossible for the Judge to avoid putting questions which gave to the examination an appearance of onesidedness on his part. The objection of the Honorable and learned Judge would apply to the cross-examination of the witnesses by the Judge, and to some extent to the charge made by the Judges of the English Courts to the jury in which they summed up and commented upon the evidence. In doing this it must often happen that the Judge would lean more to one side than to the other. This could not be avoided, and how frequently was the remark heard that the Judge summed up against the prisoner or that he summed up in favor of the prisoner. But in all this the object of the Judge was simply to get at the truth, to do justice between man and man, to perform his duty, and to act with strict impartiality in regard to all parties. He (Mr. Harington) thought the Honorable and learned Judge had considered the question too much from one point of view, and that he had assumed that the power of questioning an accused person must necessarily be injurious to such person, whereas the very contrary might be the case. A single question, judiciously put, might lead to the discovery of a train of circumstances most favorable to the accused. It had been well observed of the rule of English law in this respect that, while it shielded the guilty person as with armour, it often acted as an encumbrance upon the innocent. The Honorable and learned Judge had alluded to the practice of the Civil Courts, but he had omitted to mention a most important reform which had lately been introduced into those Courts. Formerly the parties to a civil suit could not be examined by the Court. In this respect the law placed them on the same footing as accused persons in criminal cases; but the plaintiff and defendant could now be examined by the Court in the same manner as a witness, and they were liable to the same penalty for wilfully giving false evidence. There could be no doubt that the greatest possible benefit had resulted from the relaxation of the old practice. On the whole, although the rule now under consideration was not altogether free from objection, and it had its disadvantages, it appeared to him (Mr. Harington) that the advantages greatly preponderated; and seeing no sufficient reason for any alteration of the Section now before them and of the subsequent Sections relating to the same point,

as settled by a former Committee of the whole Council after very full consideration and discussion, he should vote against the motion of the Honorable and learned Judge.

MR. SETON-KARR said that, after the able, legal, constitutional, and he might say, philosophical arguments of the Honorable and learned Judge, he would not occupy the time of the Council very long, but would content himself by mentioning the practical objections which he entertained to the Clause as it now stood. He was well aware that the propriety of examining the accused had been sanctioned by some of the ablest jurists. He knew that it had commended itself to the philosophic intellect of Bentham and had received the approbation of the veteran statesman and greatest law reformer of the present age. He was also aware that the system was fully prevalent in France and Germany, and Honorable Members well knew how the President of the Court was accustomed to comment, now with undue severity, now with moral indignation, on the answers and the demeanor of the accused. But this practice, to such an extent, stood condemned by lawyers in England, and was not, he admitted, likely to be introduced in its breadth and fulness into English Law. He would even go farther and state his conviction that it might be quite possible for an impartial English Judge, in this city, with the aid of an independant bar, and with that publicity which was one of the safeguards of trial, to use the proposed power with such evenhandedness, discretion, and marked impartiality, that it should conduce only to the ends of justice and to the ascertainment of truth. But it must be remembered that we were legislating to entrust such a power to the hands of persons of widely different temperaments, experience, and feelings, and that the operation of this Code would extend over a large tract of country from the frontiers of Burmah on the one side, to Sind and the Punjaub on the other. He much feared that some officials, familiarised with crime, and laudably anxious for its extirpation, might be tempted to exercise their zeal and ingenuity at the expense of the prisoner. He thought also that the last part of the Section which gave the accused the option of answering any questions put to him, would, in practice, not remove the objections raised. However permissive the system might at first be, it would in the end become compulsory. The accused person would feel that his silence would tell against him, or, if he chose to return answers, he might end by engaging the presiding officer in a personal contest with himself. Such a provision, too, would only harden the hardened offender, while it would confuse the timid and entrap the unwary. As regards the existing practice of examining the accused, the Sudder Court had jealously prohibited any undue moral pressure being exercised upon the defendant or prisoner by close and constant cross-questioning, and had issued a Circular directing the Judge simply to point out to the accused, in the fairest manner, the points of the case that appeared in evidence against him, leaving it to the prisoner to adduce such exculpatory pleas as he thought fit for his own safety. He therefore trusted that the Council would pause to consider fully the effect of introducing this Section in the Mofussil. He thought it would not be enough to consider what might be its effect within the 24-Pergunnahs, at Hooghly, or Burdwan, or in Districts in close proximity to the Presidency, from whence the influence of the Press and of public opinion radiated, and where English Counsel were available. But he would ask them to consider the effect of such a system as extending every where in the Mofussil, in Courts removed alike, for the time, from the salutary control of public opinion, and from the wholesome publicity of the Press. Looking at it in this practical light, he thought that the change was a dangerous innovation, and that it rested on a theory which, however defended by able and plausible arguments, demanded, for its success, a combination of requisites

and circumstances, which the administration of justice in this country could not, as yet, be held to possess.

THE CHAIRMAN said, the Honorable and learned Judge was quite right in bringing this question before the Council, notwithstanding that it had been decided by the Council before. He thought it would be rather technical to say that this motion could not be made now, when a motion to recommit the Bill could be brought forward by the Honorable and learned Judge on the motion for the third reading of the Bill, or he could bring in a new Bill to repeal this Section after this Bill was passed and had received the assent of the Governor-General. All circumstances considered, he thought it was better that the question should be decided now.

He wished to call the attention of the Council to the Clause, and to the manner in which it came to stand in the Bill. The Clause was not originally inserted by this Council, but by the English Law Commissioners. He had already on a former occasion called attention to the names of the Commissioners. Among them were gentlemen intimately acquainted, not only with the English law, but also with the law and practice of this country. They proposed a Clause very similar to the Clause in question; but it did not include the very beneficial words which were subsequently introduced into it here, namely,—"It shall be in the option of the accused person to answer such questions."

The Section, as proposed by the Commissioners, provided as follows:—

"It shall be at the discretion of the Magistrate to examine the defendant at any stage of the inquiry from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the defendant either discharged, or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be."

Then, by Section 274, the Commissioners proposed:—

"The examination of the defendant before the Magistrate shall be given in evidence at the trial."

The Law Commissioners had attached a note to the former Section, explaining their reasons for its insertion. They said:—

"As already stated, we have proposed a rule to the effect that the party accused of an offence shall not be subjected to any examination by the Police. By the Regulations of the Bengal Code it was directed that the Magistrate shall examine the defendant when brought before him; and under the sanction of this rule it is the practice of the Magistrate to examine a prisoner who has confessed to the Police, or is likely to give any information in regard to the crime of which he is accused, immediately upon his arrival at the station of the Magistrate, though the prosecutor and his witness may not have arrived. The examination is based upon the report of the darogha, and such papers as he may have transmitted with the accused party to the Magistrate.

We have considered whether it would not be a better course for the Magistrate first to examine the prosecutor and witnesses, and then proceed to the examination of the defendant: and, in order to ascertain the probable effect of prescribing such a course, we have examined two gentlemen who long held judicial employ in India. The result of the inquiry is such as to satisfy us that the discretionary power of examination at any stage of the proceedings must be left to the Magistrate. The witnesses are of opinion that the immediate examination of the accused is often essential to the discovery of truth, and that the abolition of this power of immediate examination on the part of the Magistrate would be attended with injurious consequences to the administration of justice. We accordingly propose to leave this power as it now exists. By the abolition of examination on the part of the Police, the first examination of the accused will be transferred from the hands of a functionary, whose proceedings in such matters it is often very difficult to control, to those of a responsible Judicial Officer.

We are not unanimous in our decision upon another point, namely, the latitude which should be allowed to a Magistrate as to the questions which he may put to the accused. The danger apprehended from leaving a Magistrate without restriction in the exercise of this power is, that in the course of his examination he may become engaged in something like a controversy with the accused, and that the proceeding may thus assume the character of a contest between the two, a result which may give an unfair colour to the evidence obtained, as finally exhibited by the Magistrate. It has been suggested, therefore, that limitations, more or less resembling those proposed by Mr. Livingstone in his Criminal Code of Louisiana, should be imposed as to the questions which a Magistrate may put to the accused. But upon fully weighing the difficulties on both sides the majority of the Commissioners are of opinion that

the advantages of leaving the Magistrate without control in this respect outweigh the disadvantages."

It had been asked, was it fair to convict a man on his own evidence? But the real question was, not whether it was unfair to a guilty man to convict him on his own evidence, but whether it was injurious to allow the practice with regard to an innocent man? Now, he thought it would be very injurious to the prisoner if the Magistrate were not allowed to ask him questions. In most cases the prisoner had no counsel in the Mofussil. In the Mofussil the Magistrate had to determine the facts. In the Supreme Court the Jury had to decide upon the facts. If the prisoner was merely to make his defence at the end of the trial, many matters might escape him which it was very necessary for him to clear up; whereas if the Magistrate were allowed to ask him questions on particular points, he might be able to exculpate himself. If the prisoner were an ignorant person, he might not know on what points he had to make his defence, or what were the principal charges which he ought to disprove; but by the Magistrate asking him certain questions, he might be able to get witnesses to depose to those points. In a case of murder, for instance, where the prisoner's presence at a particular spot was alleged, a direct interrogation might bring him to say that he was not there. Then the Magistrate would ask him what witnesses he had, whether he would subpœna them, and so on. Suppose the prisoner were an ignorant man, and the Magistrate were allowed to ask him questions, the man would have a chance of setting up a defence of *alibi* which his ignorance would have prevented him from thinking of. The Honorable and learned Judge might shake his head; perhaps he thought that an *alibi* was often a doubtful sort of defence; but it was only a supposed case that he (the Chairman) was putting.

With regard to the system which prevailed in France, and which had been reprobated by Lords Brougham and Campbell, it was not proposed to introduce here any of that kind of moral torture but simply to maintain a system that already existed here. Had it been shown that any ill effects had arisen from it? had it been shown that an abuse had been made of the power as in France? On the contrary, the Honorable Member for Bengal had said that the Sudder Court had jealously prohibited any abuse of it, and were constantly putting checks on its too frequent and improper use. This Bill, however, gave the accused person the option to answer, and Section 165 provided that no influence, by means of any promise or threat or otherwise, should be used to the accused person to induce him to disclose or withhold any matter within his knowledge. It was also provided by Section 167, that the examination of the accused should not be taken down in the form of a narrative, but that every question and answer should be recorded in full, so as to show whether the questions had been of a fair and impartial nature; and that the whole, after being attested and certified by the Magistrate, should be sent to the Sessions Judge, not with a view to the conviction of the prisoner, but in order that the case might be fully brought before those who had finally to decide upon the facts. He (the Chairman) thought that we should be doing a great injury to the prisoner and a greater injury to the administration of justice, if we did away with the existing system. Whether it was necessary in the Supreme Court or not, he thought, there would be no harm in allowing even a Judge of that Court to put questions to the accused with a view to enable the Jury to arrive at a fact that could do an innocent man no harm and might tend to his vindication. It was not every false statement made before a jury which would be believed by the jury. Looking at the case, therefore, in every possible point of view, he thought that the provision of the Section now under discussion would not be injurious but beneficial to an innocent man, and that it would do no harm to a guilty person. It appeared to him that we should look

The Chairman

rather to the protection of innocent than of guilty persons.

For these reasons he should vote against the motion for the omission of this Section.

MR. ERSKINE said that he did not wish in connection with this Section to enter on any general argument as to the advantages of an examination of prisoners by a Judge during the final trial. He should refrain, therefore, from offering any opinion as to the provision which it was proposed to make elsewhere, for such examinations in the Sessions Court. At present they had to consider merely what discretion in this respect should be allowed to Magistrates during a preliminary enquiry. And he quite concurred with the Honorable and learned Chairman in thinking that the point on which their decision must mainly turn, was whether the grant of such a discretion would have a tendency to elicit the truth, without operating to the prejudice of innocent persons against whom charges might wrongfully be brought. He was disposed to believe that it would have this tendency. No doubt, so long as the Magistrates throughout the country were charged with the duties of Executive Police Officers, there might often have been a risk of their straining unduly a discretional power of this kind in their zeal to secure the detection and punishment of crime. But with the disseverance of Police and magisterial functions that risk must be greatly diminished; while the prohibition now enacted against the taking down of confessions by the Police would render it expedient that the enquiry before the Magistrate should be as free as possible. He believed that in very many cases a discreet use by the Magistrate of the power of questioning a prisoner would be of real service to the accused person. In the great majority of cases in the Mofussil prisoners were not defended by counsel during the preliminary enquiry, and he thought he might appeal to any one who had experience in such matters whether, in the case especially of poor and ignorant men, some guidance such as this Section would allow the Magistrate to afford, was not indispensable, to enable accused persons to do justice to their own cases and give an intelligible explanation of facts. It had been said that the Magistrate might as it were put a case to the prisoner in respect to any point which might bear hardly upon him and ask him what he had to say on that subject. But it certainly appeared to him that, with the class of prisoners who most required considerate treatment, this would tend merely to confuse and bewilder; whereas if the Magistrate put to them a plain question on any subject which it might be well for them to explain, they would generally be able to give a plain answer. It was quite necessary, no doubt, to guard against an abuse by Magistrates, especially by young and subordinate Magistrates, of the discretion now proposed to be allowed; and if any additional and appropriate safeguards could be devised, he should be glad to see them introduced. In the meantime it had been pointed out to him that every question put by a Magistrate under this Section must, under Section 167, be fully recorded. This was one considerable security against abuse. Perhaps some further limitations against improper questionings—in the direction of those suggested by Mr. Livingstone, and adopted also in the late Code for New York, might be practicable—though not, he thought, to the full extent provided in the American system. But on the whole he believed that the grant of some discretional power of questioning was required, and would be productive of more good than evil, and he should therefore support the retention of the Section.

MR. FORBES said that he had voted in favor of this Section when it was last under discussion, and as he had heard nothing to induce him to alter the opinion under which he then acted, he should vote against the present motion. On the former occasion he had said that, if a prisoner were really guilty, he could see no reason why his own evidence, properly ob-

tained, should not be obtained by his own examination, and be used towards his own conviction. He also said what had now been so much better expressed by the Honorable and learned Chief Justice, that he considered that an innocent man would only make his innocence more clear by giving a straight-forward answer to the question put to him by the Court before which he might be on his trial. He could very well imagine a case in which the evidence against a prisoner given by the prosecutor and witnesses might be so clear as to leave in the mind of the Judge or Magistrate no doubt of the prisoner's guilt if such evidence could not be refuted, but that, by putting to the prisoner one or two questions on those points which bore most heavily against him, the Judge or Magistrate might give the prisoner an opportunity of stating facts which, being followed up, might change the whole features of the case and lead to the innocence of the prisoner being established to the Judge's satisfaction. Points which the intelligence of the Judge might show him to be important, might escape the attention of an ignorant prisoner, and the power of putting to the accused questions by the Court, might in many instances be the means and the sole means of bringing his innocence to light.

SIR ROBERT NAPIER said he fully felt the force of the objections made by the Honorable and learned Judge to giving Magistrates the power to examine the accused, but in the present state of the country he did not see how it was possible for the Courts of Justice to proceed without it. It would be impossible to provide the agency necessary to give a prosecutor in each case. He did not see any danger of the evils which might arise in England if the Magistrate or Judge were to enter into the examination of the accused, where there was an eager prosecutor and an eager defendant and a keen examination of witnesses. The Magistrate in this country was in a different position, and he (Sir Robert Napier) did not see how he could arrive at sufficient evidence without the power which it was proposed to omit and which he thought must be allowed to stand.

SIR BARTLE FRERE said, he was inclined at first to agree with his Honorable and learned friend opposite (Sir Charles Jackson) in his Motion for the omission of this Section. But the convincing arguments which had been used by the Honorable and learned Chairman had satisfied him as to the desirableness of retaining the Clause, and he reserved to himself the right of supporting any amendment which the Honorable and learned Judge opposite might move with the view of introducing what he might consider a safeguard against any improper use of the power conferred by the Section.

SIR CHARLES JACKSON said, he should say a very few words in reply. In doing so, he should not stop to enter into the question raised by the Honorable Member for the North-Western Provinces, whether he had a right to refer to the change in the constitution of this Council since he last mooted this question. The Honorable Member had observed that, if he (Sir Charles Jackson) had carried out his reasoning, it should also apply to the examination of witnesses by a Judge. The examination of a witness, however, was quite a different matter. A witness was not distracted by fear of any personal consequences as a prisoner was. It was true that now, in Civil cases, the plaintiff and defendant might be examined by a Judge, but still they were not in the position of a prisoner at the bar. For, although the parties in a Civil suit might be interested in the result and excited, they were not engaged in the same anxious conflict, inasmuch as they were not in dread of bodily suffering and disgrace. But he felt that the argument adduced by the Honorable and learned Vice-President (for whose opinions he had the greatest respect) had made too much impression, and he regretted to observe that they had made a convert of the Honorable Member of Government opposite (Sir Bartle Frere). The learned Vice-President contended that the Clause might be of use in the cases

of ignorant prisoners, and would be the means of enabling them to make the real nature of the case known to the Judge or Jury. He (Sir Charles Jackson) thought however that, if that was the best argument in favor of the measure and he could answer it, the result might be the re-conversion of his Honorable friend. It was true that there might be an obstinate stupid prisoner who did not understand his own case, and, as observed by the Honorable and learned Vice-President, there might be some advantage in the Judge asking him some particular question, such as where he was at the time, and thus drawing his attention to the points that pressed against him; but surely this was no defence of the system of examination by question and answer. Why could not the Magistrate, in the cases suggested, point out to the prisoner the evidence which pressed against him, and call upon him to address his defence to those particular points. He (Sir Charles Jackson) had himself often as a Judge suggested to an ignorant prisoner the line of defence he should take and call evidence to prove. He had said to such a prisoner, who, when called on for his defence, remained taciturn—"You have have heard the evidence; the witness says that you were at a certain place on a certain day; it is for you to show that his statement is not true." He must say that the argument resting upon the benefit the prisoner would derive from being given the opportunity of explaining his case was not satisfactory, for that opportunity could be fully afforded to him without resorting to an examination by question and answer; and with all deference for the arguments of the Honorable and learned Vice-President, he must say that it did not appear to be an argument which justified the conversion of his Honorable friend opposite.

Then again, the Honorable Member for the North-Western Provinces had said that it had for a long time been the practice in this country for the Magistrate to put questions to the accused. But we had had it on the authority of the Honorable Member for Bengal, who had been a Judge here, that that was a practice which was discouraged and had constantly been reprehended by the Sudder Court.

Then, again, the Honorable and learned Vice-President observed that, if a Judge should carry this privilege to an undue and improper length, then of course the Sudder Court would set him right. But how would that operate? It might check the future conduct of the Judge, but could not place the accused in the same position as before. As regards the prisoner, the mischief would be already done, and that was a consideration which ought to weigh with the Council who should lay down some principle in the matter, and the only principle that he could assent to was that laid down in the English law. He (Sir Charles Jackson) did not assert that it was correct to lay it down as a principle that a man should not be allowed to criminate himself. He saw no reason why a prisoner should not be allowed full liberty to criminate himself, and he thought the English law had been too fastidious on that point, and, looking at it as a moral question, the prisoner ought, if guilty, to criminate himself. But he maintained that it was a correct, just, and right rule to lay down that a man was only to criminate himself voluntarily and without the application of any extreme force, whether moral or physical. The Section under discussion might prove useful in some cases, but he felt sure that, in the majority of cases, it would work mischievously. The principle involved in it was not supported by the law in our own country. The measure, it was true, had received the support of one great and honored name—that of Lord Brougham—but it was opposed by all the other legal authorities in the House of Lords. He saw, however, it was hopeless for him to struggle any longer against the opinion of the Council.

The question being put, the Council divided—

Ayes 2.	*Noes* 6.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived.

MR. SETON-KARR then moved the substitution of the words "at the close of the evidence for the prosecution" for the words "from time to time, at any stage of the enquiry." He objected to the latter words, as subjecting the accused to an unnecessary continual mental torture.

THE CHAIRMAN said, he preferred the Clause as it now stood. He would again read an extract from the remarks of the Law Commissioners, who originally prepared the Clause, as having reference to the amendment of the Honorable Member for Bengal. They said :—

"We have considered whether it would not be a better course for the Magistrate first to examine the prosecutor and witnesses, and then proceed to the examination of the defendant: and, in order to ascertain the probable effect of prescribing such a course, we have examined two gentlemen who long held judicial employ in India. The result of the inquiry is such as to satisfy us, that the discretionary power of examination, at any stage of proceedings, must be left to the Magistrate. The witnesses are of opinion that the immediate examination of the accused is often essential to the discovery of truth, and that the abolition of this power of immediate examination on the part of the Magistrate, would be attended with injurious consequences to the administration of justice. We accordingly propose to leave this power as it now exists."

Under these circumstances, he did not think that we ought hastily to alter the Clause. Mr. Hawkins, a gentleman well conversant with proceedings in this country, was one of the Commissioners ; and the Commissioners had not merely acted upon their own knowledge, but after having examined two gentlemen, who had long held judicial employ in India, came to the conclusion that it would be injurious to the administration of justice not to allow the Magistrate to ask questions of the accused before the close of the prosecution. It therefore appeared to him that the Clause ought to stand as at present, unless those who objected to any part of it, could show some very good reasons why the Clause should be altered. No such reasons had been given in support of the present amendment, and he should therefore vote against it.

MR. HARINGTON said, he entirely agreed with what had just fallen from the Honorable and learned Chairman. The Honorable Member for Bengal seemed to think that he (Mr. Harington) had not correctly stated the law upon the point as at present in force in Bengal. He was alluding to the law as applicable to the Magistrates' Courts. He would therefore read the Bengal law. It was contained in Section V Regulation IX. 1793, and provided as follows :—

"Upon the prisoner being brought before the Magistrate, he shall enquire into the circumstances of the charge, and examine the prisoner and the complainant, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing. The complainant and the witnesses shall be examined upon oath, but the prisoner shall not be required to swear to the truth of his deposition. After this enquiry, &c."

MR. SETON-KARR—That is the Regulation, but not exactly the practice.

MR. HARINGTON said, of course, he could not speak of the practice in the lower Provinces of Bengal. He could only speak of the practice in the North-Western Provinces, which certainly was exactly in accordance with the provisions of the Regulation which he had just read. The Committee had decided by a large majority of votes that it was necessary for the ends of justice that the examination of accused persons by the Magistrates should be allowed to continue. The object in view would, to a great extent, be defeated, if the Section were pared down as proposed by the Honorable

Member for Bengal, and for that reason he should vote against the Motion.

MR. FORBES said, the law in Madras was contained in Section XXIV, Regulation IX 1816, which provided as follows :—

"Upon a prisoner being brought in the first instance before the Magistrate, charged with any crime or misdemeanor, he shall inquire into the circumstances of the charge, and examine the prisoner, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing. The witnesses shall be examined upon oath (or on a solemn declaration, if of a rank, or caste, which would render it improper to take an oath), but the prisoner shall not be required to swear to the truth of his deposition."

It was clear, therefore, that it was not proposed now to introduce any new law on the subject; and he did not consider that any ground had been shown for altering a law which had been satisfactorily in operation for nearly half a century.

SIR CHARLES JACKSON said, he was not quite sure that either of the Sections, which had been read by the Honorable Members for Madras and the North-Western Provinces, proved what the Honorable Gentleman seemed to suppose. It was true that the word "examined" was used in both, but he was not sure that it meant an examination in the form of question and answer. It might mean an examination as conducted in England where in fact the prisoner made a mere statement, if he chose to do so, although it was called an examination. He must say he saw no reason why the accused should be exposed to a harassing prosecution. As to the evidence of the Gentlemen before the Law Commissioners in England, which was referred to by the Honorable and learned Chairman, he (Sir Charles Jackson) should have liked to have seen the evidence and to have judged for himself how far it justified the conclusion arrived at by the Commissioners, that the discretionary power of examination at any stage of the proceedings should be left to the Magistrate.

MR. FORBES said that, if the learned Judge's view was correct, it would prevent the examination of a witness equally with that of the prisoner. The words he had read were "shall examine the prisoner and such other persons as are stated to have any knowledge of the crime," so that whatever limit was put upon the prisoner's examination must be held to apply equally to the witnesses; and as it could not be contended that the witnesses should not be examined in the form of question and answer, it was clear to him that it was not intended that the prisoner should not be so examined.

MR. SETON-KARR said, he had no doubt that the Honorable Member for the North-Western Provinces had quoted the law correctly. But he certainly thought that an examination of a prisoner in the form of question and answer was going far beyond the present practice; and though beaten on the original Motion, he should press his amendment to a vote.

SIR BARTLE FRERE said, he should vote in favor of the amendment proposed by the Honorable Member for Bengal, as being more in accordance with the present law as administered in Western India, which worked well and which practically provided for the examination of the accused after the close of the evidence for the prosecution.

MR. ERSKINE said, he thought that, if these words were omitted, the object intended to be secured by this Section would not really be secured. The Section referred merely to preliminary enquiries; and in such enquiries they could not be sure that all the evidence would be procurable at once. Some witnesses might be forwarded to-day and some to-morrow and so on; and unless the questions of the Magistrate might be put from time to time as new evidence was recorded and new facts elicited, the desired object would not be fully secured. He would therefore prefer that the words should remain as part of the Section.

After some further discussion, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived and the Section was passed as it stood.

The postponed Sections 165 to 167 were also passed as they stood.

Section 210 provided as follows :—

"The provisions of Chapter XII relating to the issuing of process for causing the attendance of the accused person, the summoning and enforcing the attendance of witnesses, the examination of parties and evidence, the taking of bail, and the adjournment of a case, shall be applicable to cases tried under this Chapter."

MR. HARINGTON moved the omission of the above Section and the substitution of the following :—

"The provisions of Chapter XII, relating to the issuing of process for causing the attendance of the accused person ; the taking of bail ; the summoning and enforcing the attendance of witnesses ; the examination of parties and witnesses ; the mode of recording evidence, correction, attestation, and interpretation thereof ; and the adjournment of a case ; shall be applicable to cases tried under this Chapter. On completing the examination of a witness under this Section, the Magistrate, in addition to the memorandum required by Chapter XII, shall record such remarks as he may think material respecting the demeanor of any witness while under examination."

MR. ERSKINE said, that on Saturday last, when he objected to the Section now marked *(b)*, on the paper of Amendments, that it would dispense with a careful vernacular record in some cases in which appeals would lie, the Honorable Member for the North-Western Provinces had objected to this statement, and declared that the Section would refer only to preliminary enquiries. He (Mr. Erskine) thought, however, that a reference to Section 187 would satisfy Honorable Members that his former statement had been quite correct, and, indeed, the Honorable Member himself now sought, by this modified Section, to make the same practice applicable at will to any trials before a Magistrate, and consequently to cases, many of which would certainly have to be reviewed on appeal. He was very unwilling to re-open the discussion as to the propriety of allowing any authority to dispense in criminal cases with a clear record in the language of the people, but the subject was so very important, and the changes which it was proposed by this and other Sections to introduce, were so great, that he felt constrained to call attention to the subject again. Indeed, he hoped, that if the Council should be disposed to pass the Section now proposed, and others of the same description, they would consent, by postponing a final consideration of them, or allowing the Bill to be republished, to afford the local Governments full time to express their own opinions. In the meantime, as he was not quite sure how far the Honorable Member proposed to enlarge the discretional powers of the Government, he would be glad to ascertain, for instance, in what language, if these Sections passed, and were acted upon, the statements of witnesses would generally reach the ears of the officer presiding in the Court, for it seemed to offer no impediment to the introduction at will of a system of conducting trials through interpreters. Again, it seemed to place no restriction on the use of the English language in pleadings before the Court. It provided merely for the manner in which proceedings in Court were to be recorded, which was by no means all that they required.

MR. HARINGTON said, the first Section relating to the language in which the evidence of witnesses was to be recorded, namely Section 162, for which he had proposed to substitute other Sections, appeared in the Chapter which treated solely of the preliminary enquiry by the Magistrate in cases triable by the Court of Session. This was shewn by the heading of the Chapter. In cases properly falling under this Chapter there could be no appeal, and he contended, therefore, that he was quite right in what he had stated on this point. No

doubt it might occasionally happen that a case originally taken up and enquired into by the Magistrate as triable by the Court of Session only, eventually proved within the competency of the Magistrate to dispose of. For instance, a person might be charged with culpable homicide which was an offence triable by the Court of Session, and the preliminary enquiry would be conducted with a view to commitment to that Court; but it might appear in the course of such enquiry from the medical testimony or from other evidence, that the death of the person, whom the accused was charged with having killed, was in no way owing to any act of the accused, and that the accused had been guilty only of a common assault. In the case supposed commitment to the Session would not be necessary, and the Magistrate would proceed to try the case himself, and would pass sentence on the accused. The Section referred to by the Honorable Member for Bombay was intended to meet a case of this kind. Such cases were not of common occurrence. They were quite exceptional. The Chapter as drawn was intended for cases properly triable by the Court of Session. In most cases it was known from a very early stage whether, supposing there was sufficient evidence of guilt, the case would be committable to the Court of Session, and the enquiry proceeded accordingly. It would no doubt be proper to consider what would be the effect of the alterations which were in the course of being made in the parts of the Code relating to the language in which the evidence of witnesses was to be recorded, upon cases of the nature of those referred to in the Section to which the Honorable Member for Bombay had called attention. It had been his intention in the course of the week to consider the subject, but he had forgotten to do so. He would go into the matter during the ensuing week, and at the next meeting of the Committee he would be prepared either to move an amendment himself, if he found any change necessary, or to consider any amendment which the Honorable Member for Bombay might feel inclined to propose. With regard to the points on which the Honorable Member for Bombay appeared to desire further information from him (Mr. Harington), he could only say that the new Section proposed by him contemplated nothing more than that in those places to which the local Government might think proper to extend the Section—for it was not intended that the Section should be extended at once to all parts of the country—the evidence of the witnesses, instead of being taken down by an under-paid ministerial officer, should be reduced into writing by the Magistrate or the presiding officer of the Court with his own hand and ordinarily in his own vernacular which might and would often, of course, be English. The Section made no mention of the language of the pleadings, or of the language in which Counsel, when retained, were to address the Court, or of the language in which the judgment or the sentence was to be recorded, or of the language of any other proceeding. The Section proposed by him related simply to the recording of the evidence. The language now used for all other purposes would continue to be used, any thing that there might be in the Section proposed by him notwithstanding.

MR. ERSKINE said that he had hardly perhaps conveyed to the mind of the Honorable Member the full force of his apprehension as to the inexpediency of leaving it in doubt, whether a Magistrate might not conform to all the requirements of the law though he conducted a trial through an interpreter. But this question and also that of providing for the language of the pleadings, might perhaps be more conveniently considered at another time. At present, he would observe that although it was now proposed to enable Government to dispense at will with the more satisfactory system provided in Section (*a*)—in favor of the less satisfactory system proposed in Section (*b*)—he did not know that any valid argument in favor of such a change had been brought forward. The Honorable Mover of this Section seemed to look too

exclusively to the system of taking evidence which had prevailed in Bengal—and to the reform proposed in some of the Non-Regulation Provinces. And he seemed to forget that in many other parts of the country a system existed which many persons believed to be better than either of these—and which in fact corresponded with the normal system provided for in that Code. He (Mr. Erskine) had certainly no wish to say anything in favor of the system alleged to prevail in Bengal, and which, if one half of that which was said of it by persons who ought to be well informed, were true, must be as bad as possible. Nor did he doubt that a system like that devised for Oudh would be a great improvement on the Bengal plan. Indeed he did not object to the positive provisions of the new Sections. He should be glad to have distinct legal provision made for the keeping of full and careful English notes by every European Magistrate and Judge with his own hand. But what he viewed with distrust was the tendency to dispense, in favor of these notes, with a careful vernacular record; which, if well kept—as it generally was in Bombay—formed a wholesome and useful check upon the English notes. He could speak from experience in this matter, and he would give one instance in illustration of what he meant. He had for some time been in the habit of reviewing the proceedings of an officer who was one of the best vernacular scholars he had known in the country—quite able to read for himself any native papers which came before him—always accustomed to put questions to witnesses with his own mouth—and in the habit of keeping full English notes of his proceedings. Yet he could assure the Council that in reviewing cases tried by that officer, he had often felt the great value of the native record. That record was not prepared, as was said to be the practice here, in a slovenly "hole and corner" manner. But as each witness answered the questions of the Judge, a native writer on the Establishment of the Court took down his very words in the vernacular language; while the Judge noted the answer in English. At the conclusion of the examination the deposition was read over to the writer, while the Judge compared it with his note—and any discrepancy was then cleared up. The native record thus framed was of the greatest use in disposing of an appeal. Often it might not be quite certain whether an expression in the English proceedings meant just so much, or rather more; or there might be an elliptical phrase or an ambiguous word or an obscurity resulting from haste or inaccuracy. In such cases a reference to the vernacular record generally explained exactly what had been said. He could see no reason therefore for dispensing with this safeguard or allowing it to be dispensed with, and English to be made the sole language of record in the Magistrates' Courts in any districts. He had noted some strong expressions of opinion on this subject by persons of experience in different parts of India and who were far from being indifferent to reform. But he would not now trouble the Council with these authorities; especially as there was a notice of amendment relative to the records of the Courts of Session which might raise a larger question. One expression had struck him much in one of Mr. Shore's letters on this subject. That gentleman observed that this was eminently a question in which there was need of a Lion Sculptor—there was need of some one to explain how measures of this kind would be regarded by the people. It was not enough in judging of such reforms to consider whether or not, they would be convenient to those who conducted the proceedings, or even whether they would conduce to economy and despatch. It must be considered above all, whether they would be safe for the people; whether they would be satisfactory to the minds of the people. And he could hardly believe that the people would be satisfied with an arrangement under which, in the Courts of European Magistrates, there would be no record in any language known to them or their neighbours of

what they were reported to have deposed in Court. At present if any doubt or apprehension arose in connection with any such statement, they might obtain access to the original in their own language, or the headman of their village might read it to them if they obtained a copy. Under the proposed system they would in every case have to go in search of some interpreter who knew or pretended to know English. It appeared to him that the innovation thus contemplated would not promote the ends of justice —and that there was no good reason for dispensing in such cases with a vernacular record carefully prepared in the manner now practised in Western India. He must, therefore, object to this Section—and trusted that if the Council were inclined to sanction changes in this direction they would allow the local Governments full time to offer their opinions on the subject.

MR. HARINGTON said, he thought it was a sufficient answer to what the Honorable Member for Bombay had stated as to the necessity there was for postponing the consideration of the Section under discussion, or, if the Committee agreed to adopt the Section, of republishing the Bill before it was read a third time, in order that the local Governments might have an opportunity of expressing their views on the subject, that the Section was in its character entirely permissive. Had he proposed to make the Section imperative, and to extend it at once to the whole of the Presidency of Bombay as well as to the rest of India, instead of leaving its introduction optional with the local Governments, he readily admitted that it would be quite right and proper that they should consult the local Governments before they finally adopted the Section. But, as he had already said, this was not the character of the Section. It was a permissive, not a compulsory Section. If the Bombay Government did not like the Section, or did not think proper to introduce it into any part of that Presidency, there was nothing in the Section to compel the Bombay Government to adopt a course opposed to its own views. It might or it might not extend the Section just as it thought proper. There could, therefore, be no ground for delaying the passing of the Section until there had been time to consult the local Governments in respect to it. Although he hoped that in the course of time the Section would become the rule instead of being the exception only, he had no expectation of its being immediately introduced to any great extent. But some provision of the nature of that proposed seemed absolutely necessary if only for the Non-Regulation Provinces in which, as he had already informed the Committee, a practice similar to that prescribed in the proposed Section was already very extensively followed; and unless, therefore, a Section such as that prepared by him was added to the Bill, either the practice must be discontinued in the places where it now existed, or the Code could not be introduced in those places. As he had remarked on a former occasion, he thought that this would be a subject for regret. He had read to the Committee what had been said in favor of the practice by Mr. George Campbell, the able Judicial Commissioner of Oude; he had told the Committee that the rule was reported to be working well and satisfactorily in the Punjab. They had the testimony of the Honorable Member for Bengal, that, wherever the rule had been introduced in Bengal, the result had been most favorable. The Sudder Court in Calcutta, and the local officers, had reported favorably of it, and the Honorable the Lieutenant-Governor of Bengal desired the extension of the rule. What greater encouragement could they require to induce them to pass the Section—what stronger arguments could he use in favor of the Section? It was not a question of Presidencies or of individual merit or where work was best done. The question was, which was the better system, not for any particular place only, but for the country generally; and he must say that a system which, as regarded the recording of evidence, substituted a trust-

worthy Judge or Magistrate for an underpaid ministerial officer, could not, he thought, justly be considered inferior to the system which it superseded. The Honorable Member for Bombay seemed to be contending for two records of the evidence, one to be made by the Judge or Magistrate in his own vernacular, and the other by a native officer probably in some other language; but the inconvenience of a double record, particularly when in appeal the two records were found to differ and a difficulty might be experienced in ascertaining what the witness had really said, had been noticed by the Honorable Member for Bengal. He would only further remark that the system which he advocated was that which was followed in the Supreme Courts in India and in all the Queen's Courts at home.

SIR BARTLE FRERE said, he thought that the Honorable Member for the North-Western Provinces had proved rather too much. He had observed that very serious inconvenience would arise, if there was any contradiction between the two records. It was an easy but not a satisfactory way of removing that objection, by getting rid of one of the records. As to the possibility of inconvenience, he (Sir Bartle Frere) certainly thought there could be none of any moment, because the system was now in operation, and no inconvenience had yet arisen.

MR. HARINGTON said, there was nothing in the Section as framed by him, to prevent a complete copy of the evidence being made by an Officer of the Court in the language in use at the same time that the presiding Officer was taking down the evidence in his own vernacular, and if it was considered necessary to require this, he should not object; but it would be an expensive system, as it would necessitate the keeping up of the Native evidence writers, whose services there was a general wish in many quarters to dispense with. For his own part, he should be quite satisfied with the record of the evidence made by the presiding Officer of the Court with his own hand and in his own vernacular, whether that was the vernacular or the language of the Court, or not. If there were to be two records, it must be determined which was to have the preference.

THE CHAIRMAN said, he understood the Honorable Member for Bombay to say that, when the case went up to the Session Judge, there should not be two records, namely, the record made by the Native Officer and the Magistrate's memorandum, as there might be cases in which they might both differ. It appeared to him (the Chairman) that either the Magistrate should be bound to see that his memorandum agreed with the record of the Native Officer before sending up the case to the Session Court, or that the Magistrate's memorandum ought not to be sent as part of the record. The vernacular deposition would then be the record, and the Magistrate's memorandum sent only for the purpose of being referred to. He would propose therefore to go back to Section 162 *(a)*, and to substitute the words "be annexed to the record" for the words "form part of the record."

The Motion was carried.

MR. ERSKINE then moved to except the provisions of Section *(b)* from the Section moved by Mr. Harington in lieu of Section 210.

MR. HARINGTON said, he could only repeat that the Section was of a permissive character, and that wherever the practice which it prescribed had been introduced it had been found to work well. Of this fact they had abundant proof.

The question being proposed, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Erskine.	Mr. Seton-Karr.
Sir Robert Napier.	Sir Charles Jackson.
Sir Bartle Frere.	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the Motion was negatived, and the Section passed as it stood.

The postponed Sections 230 and 231 related to the mode of recording evidence in cases triable by the Magis-

trate, in which a summons on complaint should ordinarily issue.

MR. HARINGTON moved the omission of the above Sections, and the substitution of the two following new Sections :—

"The Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanor of any witness while under examination.

In any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in Section or in the manner provided by Section , if within the jurisdiction of such Magistrate the local Government shall have made an order as provided in that Section. In any such case the provisions of Sections and shall be applicable to the evidence so taken."

After some conversation, the Sections were passed, subject to re-consideration when the Chapter of Appeals was settled.

Section 236 was passed after an amendment.

Section 237 was passed after the correction of a misprint.

Section 238 was passed after an amendment.

Section 239 provided as follows :—

"In every case in which the subordinate Criminal Court may be of opinion that the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Court is authorized to adjudge, and such punishment may be awarded by law, it shall not proceed with the trial, but shall submit its proceedings to the Magistrate to whom such Court is subordinate, and such Magistrate shall either try the case himself, or refer it to any Court subordinate to him having jurisdiction. In either case, the Court which gives judgment on the trial, shall examine the parties, as if no proceedings had been held in any other Court, and may, if it think necessary, recall any witnesses who have already given evidence."

MR. HARINGTON moved the omission of the above Section, and the substitution of the two following new Sections :—

"In any case in which the Subordinate Criminal Court shall be of opinion that the evidence warrants a presumption that the accused person has been guilty of an offence, calling for a more severe punishment than such Court is authorized to adjudge, it shall not proceed with the trial, but shall submit its proceedings to the Magistrate, to whom such Court is subordinate. Such Magistrate shall either try the case himself, or refer it to any Court subordinate to him having jurisdiction, or he may commit the accused person for trial before the Court of Session. If the Magistrate try the case himself, or refer it to any Court subordinate to him, the parties shall be examined by such Magistrate or Subordinate Court, as if no proceedings had been held in any other Court; and such Magistrate or Subordinate Court may recall and examine any witness who shall already have given evidence in the case, and may call for or take any further evidence.

Nothing in the last preceding Section shall be held to prevent the Subordinate Criminal Court in any such case as is therein described, if such Court is empowered to hold the preliminary enquiry into cases triable by the Court of Session, and to commit persons to take their trial before such Court, from committing the accused person for trial before the Court of Session. If the Subordinate Criminal Court shall be of opinion that the accused person should be committed for trial before the Court of Session, it shall proceed in accordance with Chapter XII of this Act for conducting the preliminary enquiry in cases triable by the Court of Session."

Agreed to.

Section 240 was passed as it stood.

Section 241 was passed after an amendment.

Sections 242 to 249 were passed as they stood.

Section 250 was passed after a verbal amendment.

Sections 251 to 255 were passed as they stood.

Section 256 of Chapter XIX (relating to security for good behavior) provided as follows :—

"Whenever it shall appear to the Magistrate of the District, or a Magistrate in charge of a division of a District, that any person is lurking within his jurisdiction, not having any ostensible means of subsistence, or who cannot give a satisfactory account of himself, it shall be competent to such Magistrate to require

security for the good behavior of such person for a period not exceeding six months."

MR. FORBES moved the omission of the words "a Magistrate in charge of a division of a District," and the substitution of the words "to an Officer exercising the powers of a Magistrate." He observed that this Chapter gave very large powers—in the first place imprisonment for six months in default of security being given, then of twelve months, and then of three years; and as the Section, as now drawn, would enable a class of Magistrates to exercise these powers whose ordinary jurisdiction would be restricted to imprisonment for one month, he thought there would be great inconsistency in allowing a Magistrate to imprison for three years on suspicion only when he could imprison for only one month for a proved offence. It was on these grounds that he made the present motion.

Agreed to.

MR. HARINGTON moved that the words "or other Officer as aforesaid" be inserted after the word "Magistrate" at the end of the Section.

The Motion was carried, and the Section as amended then passed.

The Clerk of the Council was authorized to insert the words "or other Officer as aforesaid," after the word "Magistrate" wherever it occurred throughout this Chapter.

Sections 257 to 262 were passed as they stood.

Section 263 was passed after an amendment.

Sections 264 to 267 were passed as they stood.

MR. HARINGTON moved the insertion of the following new Section after the above :—

"Any evidence taken under Chapter XVIII or this Chapter, shall be taken in the manner prescribed by Section 230, subject to the provision contained in Section 231."

Agreed to.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil.)"

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported to the Council that he had received a further communication from the Military Department relative to the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

The Council adjourned.

Saturday, June 8, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	C. J. Erskine, Esq., and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.

MALACCA LANDS.

THE CLERK presented to the Council a Petition from certain inhabitants of Malacca against the Bill "to regulate the occupation of land in the Settlement of Malacca."

MR. SETON-KARR moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

FINES FOR RIOTS.

THE CLERK reported to the Council that he had received a communication from the Home Department relative to the levy, in certain cases, of a fine on the Town, District, or Division in which a riot or pillage is committed.

MR. FORBES said that, although these papers had been communicated by the Government of India, yet as they referred to certain circumstances which had lately occurred in the Madras Presidency, he hoped that the Members of Government now present would allow him to make a Motion upon them.

The circumstances which had given rise to the presentation of these papers were these. It had always been the custom in Southern India for particular castes and classes to maintain a monopoly of the use of certain roads and streets on occasions of marriage or other ceremonial processions, and to deny the use of them to those of lower castes who had their particular thoroughfares allotted to them. Certain disputes which had arisen in connection with this custom had brought the subject prominently before Lord Harris' Government, and a positive and peremptory order had been issued, that all public roads and streets and thoroughfares were to be open to the use of all classes alike, at all times, and under all circumstances, and that there was to be no monopoly on the one hand, and no prescription on the other. This order, as was perhaps not unnatural, gave a good deal of dissatisfaction, and certain persons in the District of Madura determined to endeavor to obtain its annulment. With this view, they sent emissaries to Madras to present Petitions to Government, and to forward their views in any way they could, and the correspondence of these emissaries with their employers, which had been found, gave a curious illustration of the different state of advancement and intelligence in which education and intercourse with Europeans had placed the inhabitants of the Presidency, as compared with those in the Mofussil; for the correspondence said—'It is of no use for us to press this Petition. Even the Hindoos themselves laugh at us when we talk of wishing to retain exclusive use of the streets for processions, and ask us what honor it does us; that others should use them as well as ourselves, and recommend us to be content with liberty to do as we please ourselves, and to give the like liberty to all others. Here in Madras, —they added—'every one goes about when and where he pleases.' But the correspondence went on to say that the writers thought that what the Government would not give on their Petition, they might be frightened into giving by their acts, and they suggested that if a great and violent outrage were seen to have arisen from the obnoxious order, it would probably be at once withdrawn. On this hint the people in the District acted, and on the occasion of a marriage procession in a certain village, which it was known would make use of a street hitherto closed against the class who would compose the procession, the whole male population of a neighboring town turned out to the number, as the Magistrate reported, of some thousands, and in broad day-light destroyed and pillaged the property of the inhabitants of the village in which the procession was taking place, and created the greatest alarm and consternation. The Magistrate at once proceeded to the spot and apprehended 300 or 400 of the offenders, and their cases had been dealt with by the Criminal Court; but in reporting what had occurred, the Magistrate suggested the enactment of a law under which a fine might be imposed on any village in cases in which it was obvious that a great outrage had been committed with the consent and connivance of all the inhabitants, as the best and indeed the only means of bringing punishment home to all the guilty parties.

This suggestion was sent to England with all the reports on the case, and commended itself to the judgment of the Secretary of State, who directed that the papers should be transmitted to the Government of India, and it was by that Government that they were now laid before this Council.

It appeared to him (Mr. Forbes) that a very large question arose on this reference, and that, if legislation were to follow, it should be general for all India, and not confined to one Presidency. He therefore thought that the best means of disposing of the matter would be to refer it to the consideration of a Select Committee composed of the Presidency Members, for consideration and early report, so that, if anything were to be done, it might possibly be included in the Procedure Code.

He therefore moved that the papers be printed and referred to a Select Committee consisting of Mr. Harington, Mr. Erskine, Mr. Seton-Karr, and the Mover, with instructions to present a report on that day fortnight.

Agreed to.

ARTICLES OF WAR (NATIVE TROOPS).

THE CLERK reported to the Council that he had received a further communication from the Military Department relative to the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR ROBERT NAPIER moved that the above communication be printed.

Agreed to.

CATTLE TRESPASS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

SETTLEMENT OF ENAMS (BOMBAY).

MR. ERSKINE said that, in proposing some time ago an arrangement for the settlement of claims to exemptions from payment of land revenue in the Madras Presidency, Sir Charles Trevelyan had begun his Minute by remarking that the question had been before him ever since he entered the public service in 1826. He (Mr. Erskine) believed that if there were any one, whose experience of the public service extended over a much longer period, he might safely make a similar statement as to himself. And since this was so; since the general arguments on this subject had already been more than exhausted; he had no doubt that Honorable Members would readily excuse him if he abstained on that occasion from entering into a preliminary exposition of the origin and nature of alienations of public revenue in Western India, and the measures by which it had been proposed in former times to deal with them. He should therefore leave those general questions on one side for the present, and endeavor rather to explain to the Council, as clearly and as concisely as he could, some of the circumstances which had now induced the Government of Bombay to propose a summary settlement of claims of that description, and the main features of the enactment by which they desired to give effect to that proposal. It appeared then that about five or six years ago, the Supreme Government asked the Government of Bombay for information as to the working of a Commission which was engaged in enquiring into claims to exemption from land revenue demands in one portion of the Bombay territories. That reference called forth a very lengthened report on the subject, which was forwarded by the local Government towards the close of 1856, or beginning of 1857, with a statement of their own views on the whole question. At that time, and indeed up to the present time, the law relative to the adjudication of claims to hold lands exempt from the payment of revenue demands in Bombay, had not been uniform throughout the Presidency. In some districts, as in Khandeish, in the Dekkan, in the Southern Mahratta country, adjudications had been entrusted to Enam Commissioners

and their Assistants, with an appeal to the Governor in Council, under an Act passed in 1852 by the Governor General in Council. But in Guzerat and in the districts of the Northern and Southern Concan adjudications had been left to the Collectors of Revenue, with an appeal to the Zillah Courts, under Regulations passed by the local Government in the years from 1827 to 1833. When the Bombay Government took a retrospect of the working of these two systems on the occasion just referred to, they seemed to have been led to the conclusion that the plan of leaving the decision of cases of this nature to the ordinary revenue officers of Government had been anything but successful, and had resulted in a great loss of public revenue, in the disappearance of quanties of valuable records, and in much fraud and dissatisfaction as regards individuals. They were therefore at that time quite disposed to recommend that some agency similar to the Commission which had been at work in the more Southern districts, should be extended throughout the entire Presidency, and that a careful enquiry into the merits of each individual claim should be effected by those means with the least possible delay. Before, however, the Government of India could pronounce an opinion upon the suggestions then made, the disturbances of 1857 supervened. And the experience of that year and of the following year would seem very naturally and very materially to have modified the views of the local Government on this question, as on many others. By the close of the latter year, 1858, they had apparently become convinced that it was not expedient either on financial or on political grounds to press on, throughout all their districts, a strict special enquiry into every undecided claim to an assignment of public revenue. Looking at the question from a financial point of view, it was apparent not only that the cost of the agency necessary to carry out such an extensive inquisition within any reasonable period, must be greater than the state of the finances would justify the Government in proposing; but also that, even if such a scrutiny were effected with due despatch, very many claims, especially in the Northern Districts, would intermediately become confirmed to the claimants by mere efflux of time—by the mere continuance of prescriptive enjoyment. Political considerations, too, rendered it desirable that eager and protracted enquiries, by which feelings of uncertainty and disquiet were kept alive in the minds of a large and influential class of people throughout the country in connection with a great amount of valuable property, should be brought to a close without delay. The papers furnished to him (Mr. Erskine) did not enable him to state with any accuracy the total value of these claims to exemptions from the payment of land revenue in Bombay, or the number of claimants. But he believed he was not wrong in alleging that those claims in twelve Collectorates of Bombay, excluding the Provinces of Sattara and Sind, had been roughly estimated at about seventy-five lakhs of Rupees, or three quarters of a million sterling annually; and that the number of claimants in the same districts, or rather of claims—for, of course, many persons might have an interest in one claim—as known to the authorities five years ago, had been in excess of 108,000. In order to show, moreover, how many of these claimants belonged to the poorer classes, to the ordinary population of the country, he might mention that a reference to 65,000 of the minor claims had proved that upwards of 51,000 of them were for sums not exceeding twenty-five Rupees per annum, or about two Rupees a month. Under these circumstances, the Bombay Government became convinced that it would not be desirable, either on financial or political grounds, to persevere in a detailed enquiry on the plan formerly contemplated, but that some arrangement in the nature of a compromise had become indispensable; that some large measure of healing and pacification should be adopted; and that the conditions of a summary settlement should at

once be proposed to the Government of India. The proposal was made accordingly about two years ago. The provisions were originally suggested by the Government of Lord Elphinstone. They had been carefully reconsidered, and in some respects modified by the Government of Sir George Clerk. They were generally approved by the Supreme Government in India, at whose request this Bill was introduced; and in their main features by the Secretary of State in England. The Bill, by which it was proposed to give effect to the provision so proposed and approved, was drawn in Bombay by the law officers of Government, and had subsequently been amended in some respects by the local Government, in order to bring it into accordance with their latest resolutions. In that shape, he (Mr. Erskine) had now the honor to present it to the Council. Before proceeding, however, to state exactly the conditions which the Bill would offer to claimants, it might be proper to notice that it did not profess to deal with claims of every description. Several classes of cases were specially excluded from the operation of the Bill. It would not apply to any claims advanced under the stipulations of any Treaties. It would not apply to claims connected with holdings which were in the nature of Jageers or Surinjams or political tenures, and which the Government would continue to deal with under separate rules. It would not apply to claims in lieu of which service would be demandable. This last, no doubt, was a very important branch of the enquiry—so important that the Government had found it necessary to provide for it by a separate measure which was under their consideration. And lastly, the Bill would not apply to claims which had already been adjudicated, and found not to be continuable hereditarily. It would apply to all other claims to hold lands exempt from payment of public revenue—especially, to all alleged personal grants, and to all that were in the nature of endowments of religious and charitable institutions. There were also some special provisions in the Bill applicable to cases already adjudicated and in which exempt lands had been declared to be continuable hereditarily in perpetuity. The nature of the scheme by which it was proposed to effect a settlement of these claims, might be explained in a few words. A notice was to be issued to every claimant requiring him within a specified period to declare finally, whether he accepted the terms of the summary settlement as made known to him, or whether he elected to have his title tried. Should he elect to have his title tried, that course was to be left open to him on terms, some of which might be regarded as severe. No doubt, in this instance, it was essential that every legitimate inducement should be employed to encourage claimants to acquiesce in the summary settlement; and, if stringent provisions could ever be made to operate so as to cause little personal hardship, it would be under an administration like that of Sir George Clerk. Still in stating the conditions which would be applied under the Bill to claimants who elected to have their titles tried, he (Mr. Erskine) wished to guard against the supposition that he was pledged to defend them all. Persons so electing, then, would be required, from the date of such election, to pay annually into some Government office, as a deposit, a sum equal to one-fourth of the ordinary assessment on the holding referred to, according to the survey settlement rates; and to furnish security for the payment from the same date of the remaining three-fourths of the assessment, in the event of his failure to establish his claim to exemption. The *onus* of establishing his claim, moreover, would, in such cases, be laid wholly on the claimant; and adjudication would be made in accordance with the laws hitherto in force, modified only in the claimant's favor as regards the period entitling by prescription under Act XI of 1852. Should the result of the trial thus held be unfavorable to the claimant, full assessment would be levied on his holding from the date of his election of trial. Should the result be favorable

to him, the sums taken from him as deposits would be restored with interest; and his claim would be allowed; but only on the most restricted conditions hitherto applied to such claims; that is to say, the right to continued exemption from payment of revenue on the holding would not be recognised on its passing by succession to an adopted son or to collaterals; or on its passing to any one by transfer of any other kind. But in all such cases full assessment would at once be imposed. These then were the conditions on which claimants might still obtain a formal adjudication of their claims to exemption from payment of land revenue. On the other hand, any one who should accept the summary settlement, would at once be confirmed in his immunities on two conditions. In the first place, a quit rent, fixed and unenhanceable, and calculated at one-fourth of the ordinary rates of survey assessments, would be imposed on his lands, and in consideration of that, all enquiry would be dispensed with, all liability to question or interference by officers of Government would cease; a perfect title, not of course as between third parties, but as against the State, would be conferred, and it would be conferred on much more liberal terms than any hitherto recognised in connection with such claims. And this suggested the second condition, namely, that a light *Nuzzurana* would also be imposed on the lands. It was hoped and believed that this would generally be levied in the form of an annual *nuzzur* equal to one-sixteenth of the ordinary assessment. But in connection with considerable claims, an option was to be allowed of paying occasional *nuzzurs* at the rate of one year's assessment on occasion of a succession, and two years' assessment on occasion of a transfer otherwise than by succession. In consideration of this further payment, the right of the claimant to transmit his full interest to an adopted son or to a collateral heir, or to any one by gift or by sale or otherwise without reference to the Government and its officers—and as if his immunity from taxation had been private property—would be fully recognised: or in other words, by agreeing to relinquish an unadjudicated interest of a more limited kind in five-sixteenths of his claim, the claimant would at once be assured of an interest of a more perfect kind in the remaining eleven-sixteenths, and be freed from all future liability to question or interference in connection with it. And, in estimating the value of this concession to claimants in general, it must be remembered that, although the titles of many, no doubt, were derived from grants by native princes and officers of State, who had full authority to alienate the public revenues, still, that in many districts, a very large proportion of such claims originated in grants made in times of tumult by local officers who had no authority at all to make them, or had their origin merely in private acts of fraud or corruption. The present measure was designed to supersede all reference to past misdeeds or mistakes; and to confer upon all unquestionable titles for the future. Then, as regards claims to exemptions on behalf of religious and charitable institutions, there was only one particular in which the terms offered in such cases would vary from those last described. For, as on the one hand such holdings would not be liable to successions, so on the other hand it was not judged proper to accord to the trustees or managers a power of alienating the property of the institution. The fixed unenhanceable quit rent of one-fourth of the assessment would therefore be imposed to cure defects of title; but *Nuzzurana* would not be imposed, and transfer would not be recognised as continuing claims against the State. The only other class of cases to which allusion need be made, was that of persons whose claims had already been adjudicated and declared continuable hereditarily in perpetuity. In such cases, of course, as there were no defects of title to cure, no quit rent would be imposed; but it was proposed to exact *Nuzzurana*, and in lieu of it to accord to these claimants likewise the more

complete and valuable titles now to be assured to others under the summary settlement. These, he (Mr. Erskine) thought, were all the conditions of the proposed measure, to which it was necessary in the first instance to allude. He thought that, when Honorable Members had looked into the Bill, they would find that, in framing their proposals on the subject, the Government had succeeded in keeping constantly in view the two conditions by which it was necessary that they should always be guided. In the first place, that they should not sanction a reckless and excessive sacrifice of the public revenues; but in the next place, that with this one reservation the terms proposed should be as liberal and as acceptable to claimants as any terms could be. These were the objects for which this settlement had been designed; and he hoped that when the Bill in its later stages should have been amended, as doubtless it would be amended by the better judgment of Honorable Members of that Council and by public criticism, it would be calculated to secure those objects. In submitting his proposals on this subject in 1859, Lord Elphinstone had observed :—

"The value of all property held on Enam or any similar tenure will be greatly increased by the settlement, and while Government will at once recover a considerable proportion of its alienated revenue, the minds of a highly influential portion of the community will be relieved from the disquieting influence which the delay and uncertainty of our enquiries into their titles has hitherto exercised."

He (Mr. Erskine) was hopeful that these anticipations would now at last be fulfilled, and that the feelings of uncertainty and mistrust which had too long disquieted the minds of considerable classes of the people, might really be transmuted into feelings of true satisfaction with, and loyalty towards, the Government which would thus have shown its anxiety to deal promptly, fairly, and finally with a large class of their most cherished claims.

He would merely further move that the Bill be read a first time.

The Bill was read a first time.

Mr. Erskine

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill

The consideration of Chapter XX (relating to Juries and Assessors) was postponed, in consequence of the absence of Sir Charles Jackson.

MR. FORBES moved the introduction of the following as a new Chapter after Chapter XX :—

"The Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint George, shall continue to exercise under this Act, subject to the provisions of Act XLV of 1860 (The Indian Penal Code), the Criminal Jurisdiction which they are competent to exercise under any law for the time being in force, and shall have the same powers of punishment as are given by this Act to an Officer exercising the powers of a Magistrate.

"Subordinate Magistrates of the first and second class in the Presidency of Fort St. George shall, under such orders, as the Sudder Court shall from time to time issue, either commit to such Subordinate Judges or Principal Sudder Ameens the cases of persons accused of offences triable by such Judges or Principal Sudder Ameens, or refer such cases for the orders of the Magistrate of the District or other Officer exercising the powers of a Magistrate. If the case be referred to the Magistrate of the District or other Officer as aforesaid, such Magistrate or other Officer shall examine the parties as if no proceedings had been held in any other Court, and may, if it appear necessary, recall and examine any witness who shall already have given evidence, or may call for or may take any further evidence. It shall be competent to such Magistrate or other Officer to pass such order, or to proceed in the case, as he might have done, had the case been tried by himself in the first instance."

"In cases committed for trial before such Subordinate Judges or Principal Sudder Ameens, they shall be guided by the rules contained in this Act for the trial of cases before the Court of Session which are hereby made applicable to such cases, except that the cases tried by such Judges and Principal Sudder Ameens shall not be tried with the aid of Assessors. The Subordinate Judges and Principal Sudder Ameens may commit any case to the Court of Session in which the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Subordinate Judges or

Principal Sudder Ameens are authorized to adjudge."

He said that, in the Madras Presidency, there was a class of Criminal Courts between the Sessions Judge and the Magistrate, for the procedure of which no provision had been made in this Code. These Courts now followed the same procedure as the Courts of Session with the exception that they did not sit with Assessors. In all other respects their proceedings were conducted in precisely the same form as those of the Sessions Courts. Commitments were made to them by the Magistrates, and they tried no cases but such as were so committed. They had no power to originate a trial; none to make preliminary enquiries, to issue warrants, to summon witnesses, or perform any of those similar functions which had always been, and would still be, confined to the Magistracy. Their jurisdiction extended to two years' imprisonment, and if any case came before them which required a more severe punishment, it would be re-committed to the Court of Session. Such cases would, however, in future very rarely occur, because, although now all Sessions cases were committed by the Magistrates to the Subordinate Courts, and by those Courts were sent on to the Sessions, under the Code on which the Committee was now engaged the Magistrates would make direct commitments to the Sessions; and such cases only as were considered by the Magistrates within the jurisdiction of the Subordinate Courts, would be committed to those tribunals. When he was lately down at Madras, he had proposed to the Government the abolition of those Courts, but had ascertained from the Government that they could by no means consent to such a measure, and it was intimated to him that it was their earnest desire that the Subordinate Courts should be allowed to continue on their present footing without any change whatever. A Bill was now before a Select Committee for re-constituting the Courts of Criminal Judicature throughout India, and whenever that came on for discussion the position and constitution of the Subordinate Courts in Madras would no doubt be fully considered. But so long as these Courts were retained, it was the wish of the Madras Government that their present procedure should be continued; and he was himself of opinion that this should be done. These Courts had hitherto held a much higher position than the Courts of the Magistrates in Madras, for the Magistrate's power had been limited to one month's imprisonment while the Subordinate Court could pass a sentence of two years, and it was to the Subordinate Courts that the Magistrates committed all cases which were beyond their own jurisdiction. It was therefore more in keeping with their past and present position, and with the estimation in which they were held by the people, that their procedure should, under the Code, be that of the Sessions Court, with which, with the sole exception of Assessors, it was at present co-ordinate, rather than that of the Magistrates who had presided in Courts of an inferior grade. The Subordinate Judges were also Civil Judges with extensive civil jurisdiction, and in asking the Committee to assent to his present motion, he (Mr. Forbes) was asking for nothing new, but only that the expressed wishes of the Madras Government should be acceded to in maintaining the Subordinate Courts of that Presidency on their present footing.

The first Section of the Chapter being proposed—

THE CHAIRMAN said, he did not understand why, as it was not proposed to give the Subordinate Criminal Judges and Principal Sudder Ameens in the Madras Presidency, greater powers than were to be exercised by Magistrates under the Code, they should have a different procedure. It was not intended that, in the trial of the cases brought before them, the Subordinate Criminal Judges and Principal Sudder Ameens in Madras should sit with Assessors; and with the limited powers which they were to exercise, he could see no advantage in giving them a procedure which was intended for a much higher class of

Courts. His objection to the Sections proposed by the Honorable Member for Madras was that persons committed to take their trial before the Subordinate Criminal Judges and Principal Sudder Ameens, were, in fact, to be tried only by those who had the same power to punish as full Magistrates and no more, and yet a different course of procedure from that of Magistrates was called for. Therefore, it was merely a question of names or a point of dignity. He did not see why this Council should, in a general law applicable to the whole of India, make a special provision on account of the Madras Presidency. The object of Her Majesty's Commissioners in framing this Code was that there might be a uniform system of procedure throughout India, and he certainly saw no reason for making an exception from that rule in the present case.

MR. HARINGTON said, the object of the Chapter proposed by the Honorable Member for Madras, was to provide in a suitable manner for the trial of cases which what had been called the Tehseeldar Magistrates of the Madras Presidency could not dispose of themselves, and which they were obliged, in consequence, to commit to a higher Court. The Courts to which the commitments were made were the Subordinate Criminal Courts —a class of Courts unknown in the Bengal Presidency—and the Courts of the Principal Sudder Ameens. If these Courts were to deal with the cases now tried by them as an inferior class of Sessions Courts in the same manner as similar cases were dealt with in Bengal and Bombay by the local Magistrates and under the same rules of procedure, they must not only try the cases, but they must make also the preliminary enquiry which was not what was desired nor would it consist altogether with the constitution of these Courts. The great extent of some of the Madras Districts, and the number of cases arising therein, which the Tehseeldar Magistrates, owing to their limited powers, could not try, had hitherto rendered necessary a class of Courts between the District Magistrates who were also Collectors with very heavy Revenue duties, and the Courts of Session. There could be no doubt that the position of the Subordinate Criminal Courts and of the Principal Sudder Ameens of the Madras Presidency was anomalous and required consideration. The arrangement now proposed was avowedly only temporary. A Bill for constituting Courts of Criminal Judicature of a uniform character in the three Presidencies, was before the Council, and until this Bill passed into law he thought it would be better and more convenient to continue the existing state of things in the Madras Presidency in so far as the procedure of the Subordinate Criminal Courts and the Courts of the Principal Sudder Ameens, as Criminal Judges, was concerned, and to leave them to follow, as they had heretofore done, the procedure of the Courts of Session, without, however, having recourse to the aid of Assessors in the trial of the cases brought before them.

MR. SETON-KARR wished to know if the inferior Magistrates could not make the local investigations and then send on the cases to the Officers exercising the full powers of a Magistrate, namely, those whom it was now proposed to retain and designate as Subordinate Judges or Principal Sudder Ameens? As he understood the case, it was, as remarked by the Honorable and learned Chairman, a change of name on a point of dignity; and as such, he should, on the present showing, vote against the amendment.

MR. FORBES said that, as he had already observed, the proposed arrangement would be only a temporary measure, and the whole question would be considered whenever the Bill for reconstituting the Courts throughout India was brought on, and it would be only consistent with the feeling which had always been entertained for the Subordinate Criminal Courts in Madras, to continue to them the procedure which they now followed. The proposition which had been made that the difficulty should be overcome by the Government simply declaring that the Subordinate Judges should be Magistrates, and that they

The Chairman

BENGAL LIBRARY

would then follow the procedure laid down for the Magistrates, was not one that he (Mr. Forbes) could assent to. There were many duties made incumbent on a Magistrate by the Code which it would not be possible for a Judge to perform. A Magistrate was to issue search warrants; to apprehend any person committing an offence in his presence; to apprehend vagrants; to hold inquests; to visit the site of any great crime; to disperse riotous assemblies; to hold to security those of bad and suspicious character; all of which were duties quite foreign to the position of a Judge who, sitting in a Civil as well as a Criminal Court, could not ever leave his station, and who had at his disposal no subordinate officers to go about the country in execution of his orders. He had no means even of obtaining the presence of a witness without application to a Magistrate, and he (Mr. Forbes) thought it must be obvious that it was out of the question that an officer holding the position of a Judge of one of the Madras Subordinate Courts should be declared to be a Magistrate and be made subject to all the duties incumbent on a Magistrate under this Code. There were two courses open to adoption, the one to give to these Courts the procedure laid down for the Session Courts which was what the Madras Government wished, the other to give them the procedure laid down for the Magistrates, and it was his opinion that the case was one in which the wishes of the Executive Government should be acceded to, for it must be remembered that no question of uniformity was included in this matter. The very existence of the Subordinate Courts was peculiar to Madras, and it would be equally a departure from uniformity with the rest of India to give them the Sessions Courts' procedure as to give them that of the Magistrates.

MR. SETON-KARR asked whether it would not be possible for the Executive Government, by its order, to restrict these Magistrates solely to the exercise of judicial functions, and to declare that they should have nothing to do with preliminary and local enquiries?

MR. FORBES said, that would be doing by an order of Government just the thing which he proposed to do by law. The latter, he thought, was the preferable course.

After some further discussion, the Council divided as follows:—

Ayes 2.	*Noes* 5.
Mr. Forbes.	Mr. Seton-Karr.
Mr. Harington.	Mr. Erskine.
	Sir Robert Napier.
	Sir Bartle Frere.
	The Chairman.

So the Motion with regard to the first of the proposed Sections was negatived.

MR. FORBES then said, he would not press his Motion as to the rest of the Sections.

Sections 297 to 301 were passed as they stood.

The consideration of Section 302 (relating to the examination of witnesses) was postponed, on the Motion of Mr. Harington, in consequence of the absence of Sir Charles Jackson.

Section 303 was passed as it stood.

Section 304 was passed after an amendment.

Section 305 was passed as it stood.

Section 306 was passed after an amendment.

Sections 307 to 310 were passed as they stood.

Section 311 provided that "the accused person shall be allowed to examine any witness not previously named by him," &c.

MR. SETON-KARR moved the insertion of the words "if such witness be in attendance" after the words "named by him." He thought that such words were necessary, in order to prevent the accused from delaying the trial by frivolous excuses.

The Motion was carried, and the Section as amended then passed.

Sections 312 to 314 were passed as they stood.

The consideration of Section 315 was also postponed, on the Motion of Mr. Harington, in consequence of the absence of Sir Charles Jackson.

Sections 316 to 323 were passed as they stood.

MR. HARINGTON moved the introduction of the following new Chapter after Chapter XXII :—

"OF LUNATICS."

1. When any person who is charged with any offence shall appear to the Magistrate having jurisdiction, to be of unsound mind and incapable, in consequence, of making a defence, the Magistrate shall institute an enquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District or other Medical Officer, and thereupon shall examine such Civil Surgeon or other Medical Officer, and shall reduce the examination into writing, and if the Magistrate shall be of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

2. When the investigation of a case is postponed under the last preceding Section, the Magistrate may at any time resume the investigation and summon the accused person, if he shall have reason to believe that such person is in a fit state of mind to make his defence, but the Magistrate shall not proceed with the investigation, unless upon the appearance of the accused person, and after making such enquiry as he may consider necessary, the Magistrate shall be satisfied that such person is then of sound mind and capable of making his defence.

3. If any person who shall be committed for trial before a Court of Session, shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment, that the accused person is of unsound mind and incapable of making his defence, and thereupon the trial shall be postpond.

4. The accused person may be put on his trial whenever the Court shall be satisfied that he is in a fit state of mind to make his defence. If, when the accused person is again brought before the Court, it shall appear to the Court that he is still of unsound mind and incapable of making his defence, the fact of such unsoundness shall again be tried in the first instance, and the trial shall not proceed, unless the Court shall specially find that such person is of sound mind and capable of making his defence,

5. In any case in which an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence be bailable, may release such person on sufficient security being given for his safe custody and for his appearance when required. If the offence be not bailable, the accused person shall be kept in safe custody in such place as the local Government, to which the case shall be reported, shall direct.

6. Whenever a person charged with any offence shall be acquitted as falling within the exception contained in Section 84 of the Indian Penal Code, the Court shall give a special judgment, that such person did the act charged against him, being at the time incapable of knowing the nature of the act, or that he did the act charged against him, being at the time incapable of knowing what was wrong or contrary to law.

7. Whenever such special judgment shall have been given against any person, the Court before which the trial was held, shall order such person to be kept in safe custody, in such place and manner as to the Court shall seem fit, and shall report the case for the order of the local Government. The local Government may order such person to be kept in strict custody in a Lunatic Asylum or other suitable place of safe custody for such time and in such manner as to the local Government shall seem fit.

8. No person, against whom any such special judgment shall have been given, shall be entitled to be discharged out of custody, on being restored to soundness of mind, unless by order of the local Government.

9. Whenever it shall appear to the local Government that any person, imprisoned by the sentence of any Court, is of unsound mind, the local Government, by an order which shall set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a Lunatic Asylum, or other fit place of safe custody, there to be kept and treated as the local Government shall direct ; and when it shall appear to the local Government that such person has become of sound mind, the local Government by an order directed to the person having charge of him, shall remand such person to the custody from which he was removed, if then still liable to be kept in custody, or, if not, shall order him to be discharged out of custody."

After a verbal amendment in Section 7, the above Chapter was passed, except as to Sections 8 and 9, the further consideration of which was postponed.

Sections 324 and 325 were passed as they stood.

Section 326 was passed after an amendment.

Sections 327 to 330 were passed as they stood.

The consideration of Section 331 was postponed on the Motion of the Chairman.

Section 332 was passed after amendments.

MR. HARINGTON moved the introduction of the following new Section after Section 332 :—

It shall be competent to the Sudder Court to review any order, judgment, or sentence passed by such Court, and to pass any new order,

judgment, or sentence warranted by law in the case, but not so as to sentence to punishment any person for an offence of which he shall have been acquitted by such Court."

THE CHAIRMAN objected to the proposed Section on the ground that proceedings would be rendered endless by it, and that it would encourage carelessness on the part of the Judge. There was always an appeal in such cases to the Government for a commutation of sentence.

MR. SETON-KARR said that, as the cases were rare to which this Section was intended to apply, the application for a commutation of sentence should be made to the Government which was the fountain of mercy.

The Motion was then by leave withdrawn.

Chapter XXV (relating to appeals) was postponed in consequence of the absence of Sir Charles Jackson.

Sections 347 to 349 were passed as they stood.

Section 350 provided as follows :—

"Every person charged before any Criminal Court with an offence, may, of right, be defended by Counsel."

MR. ERSKINE said, he should be glad, if it were possible, to add words to this Section, empowering the Court, at least in important cases, to assign Counsel to a poor and undefended prisoner, according to the practice in the Supreme Court.

THE CHAIRMAN said, in that case the Government would have to pay the fee, as with regard to the Vakeels in the Mofussil, he thought a fee would be indispensable. It was different in the Supreme Court where Barristers would willingly undertake such cases for nothing.

SIR BARTLE FRERE said, he thought that, in cases where Counsel was assigned by law to a prisoner, it would be only reasonable that such Counsel should be remunerated at the public expense.

MR. HARINGTON said, he thought it would be better to leave the case in the hands of the Judge. He had no doubt that a prisoner would be safer in the hands of the Judge than if he were defended by a Vakeel who had had no previous acquaintance with the merits of his case and who appeared in it simply because he was ordered to do so by the Court.

The Section was then passed after the addition of the words "or authorized agent."

Sections 351 to 354 were passed as they stood.

Section 355 empowered the Court of Session "to order payment of the reasonable expenses of any complainant or witnesses," &c.

MR. SETON-KARR moved the insertion of the words "by or on the part of Government," after the word "payment," as such seemed to him to be the intention of the Section.

The Motion was carried, and the Section as amended then passed.

Section 356 was passed as it stood.

Section 357 was passed after an amendment.

Section 358 was passed as it stood.

Section 359 was passed after an amendment, on the Motion of Mr. Erskine, protecting the jurisdiction, duties, or procedure of landholders, specially empowered by law in the Bombay Presidency.

MR. HARINGTON moved the introduction of the following new Section after Section 359 :—

"The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of that Court and of all Criminal Courts subordinate to it, and also to frame forms (when not prescribed by this Act) for every proceeding in the said Courts, for which it shall think necessary that a form should be provided, and for keeping all books, entries, and accounts to be kept in such Courts, and from time to time to alter any such rule or form ; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force."

Agreed to.

MR HARINGTON moved the introduction of the following new Section after the above :—

"The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous Criminal cases and proceedings which, after the passing of this Act, shall be instituted in any Court."

Agreed to.

Section 360 was passed after a verbal amendment.

Forms A to E were passed as they stood.

Form F was passed after verbal amendments.

The Schedule was passed after an amendment in the 5th explanatory note.

The consideration of the Bill was then postponed, and the Council resumed it sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

FINES FOR RIOTS.

MR. HARINGTON said, in the early part of to-day's proceedings a Select Committee had been appointed on the Motion of the Honorable Member for Madras to take into consideration and report upon some papers which had been sent to the Council from the Office of the Secretary to Government in the Home Department, on the subject of a very serious outrage which had recently been committed by a large body of villagers in one of the Districts of the Madras Presidency, and he had now the honor to move that it be an instruction to the same Committee to consider the existing laws generally relating to the responsibilities of landowners and the occupiers of land in connection with Police matters, and to submit a report thereon at the same time that they reported on the matter which had been ordered to be referred to them on the Motion of the Honorable Member for Madras. He observed that for some time past the Police responsibilities of Zemindars and other holders or occupiers of land, had been under the consideration of the Council with a view to the consolidation and amendment of the existing law ; and it seemed desirable that whatever provisions of law on this subject were adopted, should be embodied in the Code of Criminal Procedure now passing through a Committee of the whole Council. He understood that this was what was contemplated by the Honorable Member for Madras in respect to any law which might be proposed by the Select Committee appointed that day to meet cases such as that which had lately occurred at Madras, and he thought that the same Committee might conveniently consider the whole question of village responsibilities in connection with Police matters, and submit a general proposition which would greatly assist the Council in coming to a decision on the subject.

Agreed to.

The Council adjourned.

Saturday, June 15, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere.	C. J. Erskine, Esq.,
Hon'ble Major Genl. Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

MALACCA LANDS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement regarding the Bill "to regulate the occupation of land in the Settlement of Malacca".

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

SUITS AGAINST GOVERNMENT.

MR. ERSKINE presented a communication received by him from the Bombay Government regarding the trial by District Moonsiffs of suits against Government, and moved that it be printed.

Agreed to.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 268 which empowered the local Government to "order that the trial *of all offences*, by any Court of Session, shall be by Jury in any District," &c., was at first passed as it stood. But subsequently, on the Motion of the Chairman in consequence of the amendment carried in Section 272, the words "or of any particular classes of offences" were inserted after the words "of all offences" so as to meet the case of Districts where a Jury could not be formed for the trial of all offences.

Section 269 provided as follows :—

"Criminal trials before the Court of Session, in which a European (not being a British subject) or an American, is the accused person or one of the accused persons, shall be by Jury, of which at least one-half shall consist, if such accused person desire it, of Europeans or Americans, if so many of such races are on the Jury list of the District."

SIR BARTLE FRERE said, it had been suggested whether this Section might not be modified, so as to give the benefit of it to persons other than Europeans (not being British subjects) or Americans. There were many classes of persons who, though of European descent, might not be able to establish their status as Europeans. There was a large community of European origin at the Cape and elsewhere, in Africa and Australia, as well as in various parts of Asia, for example, in Ceylon, Mauritius, Bourbon, and the Eastern Islands. The principle followed in England was entirely in accordance with natural justice, namely, that no person who was not a native of the United Kingdom, could be tried, except by a Jury composed of half of his own countrymen. The same principle, he thought, ought to be extended to this country. He should propose the omission of this Section, and the substitution of the following :—

"Criminal trials before the Court of Session, in which a person not being a native of India, is the accused person or one of the accused persons, shall be by Jury, of which at least one-half shall consist, if such accused person desire it, of persons not Natives of India, if so many persons not Natives of India are on the Jury list of the District."

MR. ERSKINE said, he doubted if the amendment would meet the object of the Honorable Member which, as he understood it, was that a prisoner should be tried by a Jury of which at least one-half should be his own countrymen. Under the amendment, however, as it was now framed, a Frenchman, for instance, might be tried by a Jury of which one-half might be Chinese or any other Foreign race, having probably no sympathy with the accused.

MR. HARINGTON objected to the Committee being called upon without any previous notice and without their being allowed sufficient time for consideration to vote upon the very important amendment which had been moved by the Honorable Member of the Government (Sir Bartle Frere). The first objection that occurred to him to that amendment was that it would give to a Turkish Mahommedan an advantage which would not be enjoyed by a Native of India of the same persuasion. For this he could see no reason. The amendment was, no doubt, open to other objections, and

he apprehended that difficulties, not anticipated or seen by the Honorable Mover, would be found in the way of its adoption. He (Mr. Harington) was unwilling off-hand to commit himself to a vote, either against or in favor of the amendment, and he hoped that the Honorable Member would not object to the consideration of his amendment being deferred until Saturday next.

SIR BARTLE FRERE having acquiesced, the consideration of the Section was accordingly postponed.

Section 270 was passed after amendments.

Section 271 was ordered to stand over for the purpose of being considered in connection with Section 269.

Section 272 provided as follows :—

"In trials by Jury before the Court of Session, the Jury shall consist of such number of persons, not being less than four, as the Court shall direct."

SIR CHARLES JACKSON said, he thought that four was too small a number, and that the decision of a Jury of four would not carry sufficient weight. As Section 268 provided that the local Government should declare in what Districts trial by Jury should be introduced, he thought they had a sufficient guarantee that the Jury system would be introduced only in Districts where a sufficient number of Jurymen were obtainable. He also thought an even number was objectionable in so small a number as four. He would propose to substitute seven for four.

MR. HARINGTON said, the subject was fully considered in 1859, and it would be found from the Debate which then took place, that it was proposed to fix the number at six, but that the number was ultimately reduced to four, because it was thought that there might be difficulty in many places to get the half of a Jury of six composed of Europeans or Americans.

MR. ERSKINE said that the remark of the Honorable and learned Judge as to the decision of a Jury of four not carrying weight, was rather in favor of the Section as it now stood, because it was proposed to give force to the verdict of a majority, which, if the Jury consisted of four, must be three to one.

MR. SETON-KARR remarked that, if any part of the country was fitted for trial by Jury at all, it would be desirable that as little as possible in the way of decision on the facts should be left with the Judge, and that an uneven number of Jurymen should always be summoned. For this reason he should be prepared to support the amendment of the learned Judge for an uneven number of seven or five.

THE CHAIRMAN said, he was afraid that, if an even number was not fixed, the Council would have to alter all those Sections which spoke of one-half of the Jury consisting of particular races.

SIR CHARLES JACKSON then proposed to fix the number at six, but soon afterwards said that he had just been informed of a strange objection to that number. He had heard from good authority that natives considered six an unlucky number, and would deem themselves to be delivered over to certain conviction if tried by a Jury of six. That was no doubt a very silly objection, but still the Council must have some respect for the feelings of those for whom they were legislating. He was further told that the natives were accustomed to the number five in their Punchayets and liked that number, and he should therefore go back to that number. He objected also to the words "not being less than," as being indefinite, and should therefore propose the substitution of "five persons" for the words "such number of persons not being less than four as the Court shall direct."

MR. HARINGTON said, he had never heard of the objection just stated to the number six, but he presumed that the Honorable and learned Judge had good authority for what he had stated. The only objection he (Mr. Harington) had to the number five was that, when persons of certain classes were under trial, it would necessitate that the majority of the

Jury should always be of particular races, and there might often be a difficulty, if not an impossibility, in obtaining the number requisite to form such majority. He had no objection to the maximum number being fixed, but he would leave the Court to fix the number within certain limits, that is, taking five (if that number should be preferred to four) as the lowest, and nine or some other number as the highest.

MR. ERSKINE said, perhaps the objection of the Honorable and learned Judge might be removed if the words "as the local Government shall from time to time direct" were substituted for the words "as the Court shall direct." He decidedly objected to the power lying with the Court.

MR. FORBES said, he thought the less the Government had to do with fixing the number of the Jury the better.

MR. SETON-KARR said that he should support the view of the Honorable and learned Judge, but with the alteration suggested by the Honorable Member for the North-Western Provinces. He thought it would be very undesirable to leave it to Government to decide on the precise number of the Jurymen, whether five, seven, or nine. The discretion as to numbers might remain with the local Court. The circumstances of the District might so vary that different numbers of Jurymen would be available at different times or seasons, and the very importance of a great trial would facilitate the assemblage of a larger number. The occasion, in fact, would call forth the very power required.

SIR ROBERT NAPIER said, it would be a pity to limit the number of Jurymen in cases where they could easily be obtained. He had no objection to there being a minimum; but he thought that, if procurable at all, the larger the number of Jurors the better.

The question to omit the words "such number of persons, not being less than four, as the Court shall direct" was put and carried.

SIR CHARLES JACKSON'S amendment to substitute the words "five persons" for the words omitted, was then proposed.

MR. HARINGTON moved as an amendment on the above amendment, that the following words be inserted instead of the words proposed to be substituted:—

"such number of persons, not being less than five, or more than nine, as the Court shall direct."

MR. ERSKINE moved, as a further amendment on the above amendment, the insertion of the following words in lieu of those proposed:—

"five persons, or of such number being an uneven number and not being less than five or more than nine as the local Government, by any General Order applicable to any particular District or to any particular classes of offences in that District, shall direct."

MR. ERSKINE'S amendment being proposed—

MR. FORBES said, he had two objections to make against the amendment of the Honorable Member for Bombay. He thought, in the first place, that it would be objectionable to put it out of the power of the Judge to assemble as large a number of Jurymen as he at any particular time might be able to summon, and as on some particular occasion it might be desirable to summon, which would be the case if this amendment should be carried, because if the Court were situated in a District where under ordinary circumstances the Judge would not be able to summon a Jury of more than five, the order of Government would probably limit the Juries in that District to that number. But there might be particular cases, a case of murder for example, in which a European might be supposed to have been concerned, in which either by the temporary residence of Europeans at the station, or by troops marching through his District, it might be in the power of the Judge to summon a larger number of Jurors than could ordinarily be obtained, and then it would be a pity, in his opinion, that the Judge should be limited to the ordinary number, and not have it in his power to enlarge the Jury for the particular occasion. Another and

a stronger objection which he had was that it would put it in the power of the Government to fix the number of the Jury for the trial of any particular case, since if Government were to be enabled by law to fix the number of a Jury in each District by an order in Council, they must be presumed to have the power to alter that order, and he thought that words had fallen from some of the Honorable Members who had already spoken to the effect that a power to recall and alter the order should be included in the Section which gave the Government power to make the order originally. If so, it would obviously be in the power of the Judge to write and tell the Government that a case was coming on in which the Government was interested, and the Government would be able to alter the number of the Jury to suit the particular case. He did not at all say that the Judge would make such a recommendation, or that the Government would pay attention to it if it were made, but he was strongly of opinion that the less the Executive Government had to do with Juries, and the less that it even appeared to have to do with them, the better, and that when the Council was legislating on so important a matter as trial by Jury, they should not leave it possible that the institution should be tampered with by the ruling power under any circumstances that could possibly be supposed. He (Mr. Forbes) had always understood and always considered that trial by Jury was the great safeguard of the people against a powerful and despotic Government, and he could not consent to any law which should put in the power of the Government to alter the number of a Jury whenever it might suit their purpose, however little likely it might be that the power would ever be exercised.

MR. HARINGTON said, he objected to the amendment proposed by the Honorable Member for Bombay, and should vote against it. The amendment had its origin in a feeling of distrust. It was just this feeling of distrust of public officers holding responsible situations, which so often stood in the way of reforms and improvements in this country. And who were the objects of their distrust on this occasion? Why, the Judges of the Courts of Session. They were quite willing to entrust those Officers with large powers of punishment, even to the extent of sentencing persons to death, or of commuting that punishment to imprisonment for a number of years or to transportation for life, but they were afraid to give them the power of fixing the number of the Jury at six, seven, eight, or nine, according to circumstances, or to the number of persons available, because they might abuse the power. This was the only ground that had been assigned for the amendment. No other reason had been given for it. Now he contended that this was not a good reason, and that there was no foundation for the apprehensions which had been expressed that, if the Court of Session was allowed to fix the number of the Jury between five and nine, abuses might arise;—the Judge of the Court might make a bad use of the power given to him. He felt quite sure that no Session Judge would ever dream of attempting to secure the conviction or acquittal of an accused person, by having either a smaller or a larger number of persons on the Jury. He at once rejected such an idea. Let them appeal to the result of experience. What did that tell them? For thirty years the power of determining the number of the Jury in cases tried by Jury had been vested exclusively in the Sessions Judges, and he would confidently affirm that the power had never been abused. Could any Honorable Member say that it had been abused?

MR. ERSKINE said that such might be the law in Bengal, but it was not so in Bombay.

MR. HARINGTON said, he was speaking of Bengal. He afterwards pointed out that the Bombay law was the same as the Bengal law.

MR. ERSKINE said, he dissented entirely from that interpretation of the Bombay law. The system of trial by Jury had never been introduced into

the Bombay Presidency. The persons who might be employed under the Bombay law "more nearly as a Jury" were merely Assessors, whose opinion, even when they were unanimous, might be over-ruled by the Judge, who alone was responsible for the finding.

MR. HARINGTON resumed, considering the amendment merely as a matter of convenience, he thought the rule proposed by the Honorable Member for Bombay would be found in practice very inconvenient. In large Districts where the number of commitments was great, if the Government fixed the number of the Jury at the maximum, and it was found necessary to convene nine Jurors in every case, he feared great difficulty would be experienced in securing the attendance of this number without seriously harassing and inconveniencing the people. On the score of convenience, therefore, he considered it would be better to leave the matter in the hands of the Judge, and to allow him in every case to summon a Jury of from five to nine, according as he might think proper, or found convenient. In comparatively trifling and unimportant cases the Judge would probably be satisfied with the smallest number. In important or difficult cases he would doubtless generally have a Jury of nine persons, if so many were procurable. It was quite a new principle to declare that the number of the Jury should depend upon the character of the offence to be tried, and he thought that some difficulty would be experienced in carrying out that part of the proposed rule which declared that the local Government should fix the number of Jury for the trial of particular classes of offences. Upon what principle would the Government proceed in declaring that the offence of dacoity should be tried by so many Jurors; rape by so many; adultery by so many; and so on throughout the catalogue of crimes. Was murder, he would ask, of necessity or as a rule; to be tried with a Jury of three in one District, and with a Jury of nine in an adjoining District. This might be the effect of the proposed rule, and of tying the hands of the Judge as intended instead of leaving him a discretion to be exercised within certain limits. If the principle was a sound one, and they could properly declare that the number of the Jury should be proportioned to the offence to be tried, then he contended that it was the duty of this Council to determine of what number the Jury should consist for the trial of the different classes of offences. They had no right to devolve that duty upon the Executive Government. He had another objection to the proposed amendment. He contended that in requiring that the Jury should always be of an uneven number, the rule would often operate unfairly towards the natives in cases in which Europeans or Americans were concerned. It would give a preponderance in the Jury to persons of those races, and would prevent the Judge from having on the Jury an equal number of the classes of persons interested in the trial which was what justice in such cases seemed to require, and what a Judge anxious to act impartially would obviously desire. He thought the rule as proposed would cause much dissatisfaction in cases in which Europeans and Americans were on their trial, and that the people at large would not have confidence in the verdict given by the Jury as proposed to be constituted in such cases. The amendment which he had proposed was not open to any of the objections which appeared to him to exist to the amendment of the Honorable Member for Bombay.

SIR CHARLES JACKSON said that, as he understood the objections of the Honorable Member for the North-Western Provinces, they might be divided under two heads. *First*, the Honorable Member said that we should not distrust our Judges; and *secondly*, he objected to entrust Government with the power of directing what number of persons Juries should consist of for the trial of particular offences. As to the first point, he (Sir Charles Jackson) did not wish to say anything personal with regard to the Judges.

Notwithstanding that he thought them to be untrained men, he believed them to be very honest and high-minded gentlemen and that there was no occasion why they should be distrusted in this respect more than other Judges. But the question now before the Council was whether, as they were now about to introduce the Jury system for the first time into this country, they ought not to provide all proper and constitutional safeguards. The question was whether they ought to lay down proper general rules applicable to all cases rather than to allow the Judge to interfere in fixing the number of the Jury in each particular case that was to be tried before him. The amendment proposed to authorize the local Government to direct of what number the Jury should consist in a particular District and not in a particular case, and that was the advantage which this amendment possessed over the other proposed by the Honorable Member for the North-Western Provinces. The Honorable Member said that they entrusted the Judges to try questions of life and death, and yet they would not trust them to direct whether in a particular case there should be five, six, seven, eight, or nine Jurors. But that was not the question. The delivery of the judgment was the proper duty of the Judge, and the question was whether it was wise, just, or proper to allow the Judge to determine what should be the proper number to try a particular case. He did not mean to insinuate that such a thing would be done; but if the Judge were allowed to fix the number, inasmuch as he would probably know every person in his District, he might possibly call such a number as would ensure what he thought a right decision of the case.

Then the Honorable Members objected to the power proposed to be given to the Government to regulate the number of the Jury according to the class of offences. Now, the object of the Council was to extend the Jury system as widely as possible and to avoid every thing calculated to throw impediments in the way of its introduction, and if they were to lay down that a Jury was always to consist of nine, what an enormous Jury list would have to be prepared? That would be importing a great difficulty into the measure. But if it were to be provided that in petty cases a smaller number would be sufficient, while in serious cases, such as murder and homicide, a larger number should be called, the opportunity would be afforded to the Government of extending the benefits of trial by Jury sooner and farther than they otherwise would be able to do. For these reasons he should support the amendment of the Honorable Member for Bombay

MR. HARINGTON said, he thought that it was the duty of this Committee to declare the number of the Jury in particular cases, and that it was not fair to throw that duty upon the Government.

SIR CHARLES JACKSON said, that was just the practical difficulty the Council were laboring under, as they had not the means of determining what number of Jurymen particular districts could furnish.

MR. ERSKINE said, he did not think it necessary to say much in support of his amendment, for most of the arguments which had been advanced against it had already been fully and ably answered by the Honorable and learned Judge. But there were one or two minor points on which it might be well that he should say a few words. He confessed he had not quite followed the Honorable Member for Madras in his remarks as to the danger of giving the local Government power to decide by a general order the number of which the Jury should consist in particular Districts or particular classes of offences in such Districts. The Honorable Member seemed to be apprehensive—although he did not so far distrust the local Governments as to think that they would be apt to resort to such an expedient—that at least they might in some particular case be induced, on the report of the Judge, to cancel any general order which they might previously have

issued, and have recourse throughout the District generally to a smaller or larger number of Jurors, not because they thought this would be generally expedient, but in order to meet their own views in connection with some particular trial. But what was the remedy proposed for this possible, though improbable, abuse of power? The Honorable Member apparently would leave it to the discretion of every Judge to adopt a larger or smaller number of Jurors at his discretion in every trial. This would surely be to enhance the risk of abuse, and to enable many an individual—without breaking through or altering any general order—to fix the strength of a Jury with reference to the circumstances of an impending case; and this although it was regarded as dangerous to allow the Government to exercise such a power even if they could do so only by altering for that purpose the rule permanently applicable to the whole District. If, therefore, a selection must be made between these two arrangements, it seemed to him that the balance of safety and security was all on one side, and that it was certainly in favor of the method recommended by him. All our history, moreover, seemed to show that it was through the infirmities of Judges rather than any direct influence of Government, that obstruction to the free action of Juries was to be apprehended. He thought we need not go far back in the history of our own country, to be convinced how much of our freedom was due to restrictions on the undue interference of presiding Judges in such circumstances.

MR. FORBES said that he might perhaps be allowed to offer a very few words in explanation. He, for his part, had no doubt that it would be better that the matter of determining the number of the Jury should rest with the Judge rather than with the Government, and he thought that trial by Jury was the very thing of all others connected with Criminal Justice with which the Government ought to have the least to do. It might be of great importance to a Government to obtain a conviction, but it could seldom, if ever, be of any importance to a Judge; and when the Honorable Member referred to our own past history, he confessed that many cases occurred to him in which an entirely independent Jury had stood between the accused and a powerful Government in a way in which a Jury would not have done had the Government had any thing to do with its constitution. He, therefore, had no hesitation in saying that it *was* his opinion that the matter was one that on principle should rest with the Judge rather than with the Government.

MR. ERSKINE resumed.—Then the Honorable Member for the North-Western Provinces declared that this amendment had its origin in distrust. He (Mr. Erskine) must say however distinctly for himself that it was not a feeling of distrust towards any class of Judges, that suggested this Motion. There was no doubt a feeling that the law, as it stood, would impose on Judges responsibilities and confer on them power, which ought on general considerations to be withheld. But the main objection to it was that all arrangements connected with the empanelling of the Jury should not only be beyond censure, but beyond suspicion; and he feared that, however pure might be the considerations which determined a Judge to employ a smaller or larger number of Jurors in any case, sudden and unexplained changes might give occasion to those who surrounded him—those subordinate employees who in this country were too often so prone to misrepresent the purest acts—to excite suspicions and bring the proceedings into disrepute. It seemed to him that this was a real and practical danger, and furnished a valid argument in favor of the alteration now proposed. Again the Honorable Member said that he did not see why one class of offences should be tried by a larger number of Jurors, and another class by a smaller number. He (Mr. Erskine) saw no practical difficulty in this. He did not see why the local

Government should not be allowed to lay down by a General Order that all cases of a serious nature should be tried by a specified larger number of Jurors, but that petty cases should be disposed of by a Jury consisting of a specified smaller number. Where it would be difficult to secure a sufficient number of qualified persons, there seemed to be no necessity for obliging a large number to attend at minor and simpler trials. He saw no more difficulty in arranging this than in providing that certain classes of offences must be tried by a regular Jury of twelve, and that others might be tried summarily by a single Magistrate. The Honorable Member next objected to constituting Juries of an uneven number, on the ground apparently that, in cases in which at least one-half of the Jurors were to be of the race of the accused, it would thus be necessary to have a majority of that race. But he (Mr. Erskine) saw no objection to that arrangement. The words of the Honorable Member might be so interpreted as to suggest that he regarded it as the *ne plus ultra* of goodness in such Juries, that exactly one-half should be likely to be swayed in one way, and the other half in the other; in which case the decision would, in fact, be that of the Judge. He could not however concur in such a view. He would prefer that there should always be a verdict by a majority of the Jurors, and he thought that in many cases where persons of the excepted classes were tried, it would even be an advantage to have the entire number of Jurors of that class if possible. Indeed there was nothing in the Bill as now drawn to provide that a person of an excepted class should be tried by a Jury of whom one-half only should be of his own class. The provision was that at least one-half should be of that class; but it did not provide that more than half should not be. It seemed rather to contemplate that as many as could be assembled, should be of that class. Instead, therefore, of regarding this as a disadvantage, he looked upon it rather as an incidental advantage of his proposal, which at all events would secure that in all cases there should be a verdict by a majority of Jurors, which was an important consideration. He was not therefore prepared to admit that the objections to his amendment were valid.

MR. SETON-KARR said, he would merely add one word more. It was the constitutional aspect of the case, which had been so strongly and learnedly argued by the Honorable and learned Judge, that convinced him of the propriety of leaving the choice with the Judge, rather than with the local Government. The local Government could only act on the representations of its Executive Officers, and was not in a condition to interpose with the same impartiality as the District Judge.

THE CHAIRMAN said, his opinion was rather in favor of the amendment proposed by the Honorable Member for Bombay. The Code, as originally prepared by Her Majesty's Commissioners in England, provided as follows:—

"In all trials, whether before the High Court at Calcutta or before the Session Judge, the Jury shall consist of not less than three, nor more than nine persons, and unanimity, or a majority of not less than two-thirds with the concurrence of the Judge, shall be necessary for a verdict of guilty, and in default of such unanimity, or of such majority with the concurrence of the Judge, the defendant shall be acquitted."

According to the amendment of the Honorable Member for Bombay, the minimum number three would be increased to five. It might be inconvenient to provide that in all cases the lowest number should be higher than five, for in many Districts more than that number might not be procurable. The following were the reasons given by the Law Commissioners for leaving the number to the discretion of the Governor-General in Council. They said:—

"In regard to the number of the Jury, it is proposed that in Calcutta the Jury shall always consist of nine, and at all other places of such number of persons, not more than nine and not less than three, as the Governor-General in Council shall from time to time direct. The number in different places must be regulated

by the number of available qualified Jurors; and in many places the number of three will be procured with greater difficulty than nine in Calcutta."

He had no doubt that there would be great difficulty in getting a Jury, if we fixed a higher number than five; because when we considered how the Jury would be constituted, and that the Sessions would be held at least once a month, and that we could not make the same Jurors serve every Sessions, it was obvious that five was as high a number as we could safely fix. It would not be fair to take away the same persons from their business month by month, for the purpose of serving on the Jury, merely because you had a small number in the neighbourhood eligible to serve as Jurors. Then the Jurors were to be selected by ballot, and to do this, there must be a larger number of persons summoned to attend each Session. He thought that at least double the number required to form a Jury should be in attendance; so that, if five be the number of the Jury, the Jurors summoned should be at least ten. Then when the Jury was selected by ballot for a particular trial, both the prosecutor and accused would have the right of challenging any particular Jurors; and if their objections were allowed, other persons would have to be substituted for those challenged. It might therefore be a great difficulty in particular cases to have a larger number than five. But he quite agreed with the Honorable and gallant Member that, if we could, we should have a larger number than five. That however depended on the circumstances of each District, and it would be very inexpedient to require a larger number in all cases. Then the question as to the number of the Jury must be left to some one. Was it to be left to the Judge or to the Government? The Honorable Member for Madras had said that the Government ought in no case to be entrusted with the power. Then was it to be given to the Judge, and to be exercised at each trial? Whatever we did, we must do it by a general order. He did not know if the Honorable Member for Madras supported the amendment of the Honorable Member for the North-Western Provinces, but the principle of his argument was this. If the Judge could get nine by reason of troops marching through his District, he would take nine. But he (the Chairman) thought that, in legislating, we ought to deal with generals, and not with particulars. He would not allow the Judge to take nine because troops were passing through his District at a particular time, or only five at another time because the troops had gone. The man who would be tried by a Jury of five would be sure to say that he would have been acquitted, had he been tried by a Jury of nine. Therefore he agreed with the Honorable Member for Bombay that the course of justice must not only be pure, but must not be open to suspicion. Then the Honorable Member for Madras had said that, if this amendment were carried, we should be placing in the hands of the Government a power which we ought not to entrust to them. But he (the Chairman) apprehended that the manner in which the Government would act in the matter would be this. They would call upon the Judge or probably on the Collector of each District to report how many persons in that District were qualified to serve on the Jury, and then the number would be fixed by a general order. But the Honorable Member for Madras said that the Government might alter the order on the report of the Judge to answer their own purposes in a particular case. Now could any one conceive a more flagrant instance of abuse of power than this? Even if the Government could feel disposed to take such a course, they would never be so foolish as to do it. He therefore thought that we were not putting too large a power in the hands of the Government, and even if it were so, he would rather entrust the power to the Government than to the Judge.

Then it was asked, whether we ought to give the Government the power to determine, whether the num-

ber should be nine in some cases, and five in others. He thought that we might very properly do so. For instance, one District might be able to afford nine Jurymen for the trial of serious or important cases which were of rare occurrence, but no more than five for all other cases. In such instances the Government might order that, in all capital cases and in cases punishable with transportation, the Jury should consist of nine; while in cases punishable with four year's imprisonment, the Jury might consist of five, if a larger number was not procurable. Thus we should leave the Government as fair a discretion as possible to deal with the circumstances of the country, and we should at the same time frame our laws on general principles. Then the Honorable Member for the North-Western Provinces had said that we ought to specify what offences were to be tried by nine Jurors, and what offences by five Jurors. But if we did so, we should be falling into the very difficulty we were endeavoring to avoid, because we had not the means of obtaining the information necessary to enable us to deal with the matter. He therefore thought that we could not do better than adopt the principle laid down by the Law Commissioners in England, of leaving it to the discretion of the Government to declare by a general order what the number of the Jury in each District should be. The only difference between the proposal of the Law Commissioners and the present amendment would then be that, instead of fixing the minimum number at three, we fixed it at five; and instead of leaving the discretionary power to the Governor-General in Council, we left it to the local Governments. Instead of being obliged to make constant reference to the Governor-General in Council, the local Governments would be better able of their own motion to deal with the circumstances of the country; and if we should hereafter find that five was too high for the minimum number, we could easily pass a law reducing the number.

The Chairman

For these reasons he should vote in support of the amendment of the Honorable Member for Bombay.

The question being put, the Council divided as follows:—

Ayes 4.	*Noes* 4.
Sir Charles Jackson.	Mr. Seton-Karr.
Mr. Erskine.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
The Chairman.	Sir Robert Napier.

The numbers being equal, the Chairman gave his casting vote with the ayes. The Motion was accordingly carried, and the Section as amended, then passed.

Section 273 provided as follows:—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Court concur in such finding, the accused shall be convicted. If the Jury be equally divided in opinion, the Court shall decide whether the accused shall be convicted or acquitted. In all other cases, the accused shall be acquitted."

SIR CHARLES JACKSON said, he objected to this Section on two grounds. First of all, he objected to the phraseology of the Section, and next to the principle of a part of it. With regard to the former, he thought it would make it clearer if the words "the accused shall be convicted" were inserted after the words "if the Jury are unanimous in a verdict of guilty" in the beginning of the Section. His second objection had reference to the words "or if a majority of the Jury find a verdict of guilty, and the Court concur in such finding, the accused shall be convicted." He saw no reason why, when a majority of the Jury found a verdict of guilty, the accused should not be convicted without the concurrence of the Court.

THE CHAIRMAN said, the principle upon which the Law Commissioners framed this Section was that "unanimity, or (with the concurrence of the Judge) a majority of not less than two-thirds, shall be necessary for a verdict of guilty."

MR. SETON-KARR said, that he was rather inclined to agree with the Honorable and learned Judge on his right (Sir Charles Jackson), that the

principle of a part of the Section was very questionable. But if the Council did not think that this point should be now entertained, he still thought that the Section was capable of considerable verbal amendment. He would suggest the insertion of the words "If a majority of the Jury find a verdict of guilty, and the Court shall not concur in the finding, the accused shall be acquitted" after the word "convicted" at the close of the first sentence. The rest of the Section might then be struck out.

After some conversation, amendments were carried, which made the Section as finally passed stand as follows:—

"If the Jury are unanimous in a verdict of guilty, the accused shall be convictedi. If a majority of the Jury find a verdict of guilty, and the Court concur in such finding, the accused shall be convicted. If only a majority of the Jury find a verdict of guilty, and the Court does not concur in such verdict, the accused shall be acquitted. If the Jury or a majority of a Jury find a verdict of not guilty, the accused shall be acquitted.'

Section 274 fixed the age of persons capable of serving as Jurors and Assessors from twenty-five to fifty-five years.

MR. SETON-KARR suggested that the age of twenty-one be substituted for the age of twenty-five. Seeing that Natives generally attained their majority at either sixteen or eighteen years of age, and seeing that they were generally more precocious than Europeans at that age, and quite competent to discharge the duties of Jurors, he thought that twenty-one was a very safe limit.

MR. HARINGTON said, he should gladly support the amendment. On a former occasion he had proposed that the minimum age should be reduced to twenty years, but he was out-voted in Committee.

After some conversation the limits of age were respectively fixed at twenty-one and sixty years, and the Section, thus amended, then passed.

Section 275 was passed after the substitution for the words "infamous offence," of the words "other offence which in the judgment of the Collector renders them unfit to serve on the Jury."

Section 276 specified what persons were exempt from liability to serve as Jurors or Assessors.

The words "or Customs" were added to the Clause "Commissioners and Collectors of Revenue."

The following Clause was introduced, on the Motion of Mr. Harington:—

"All persons engaged in the Preventive Service in the Customs Department."

The following Clause was introduced on the Motion of Mr. Forbes:—

"All persons engaged in the collection of the Revenue, whom the Collector may think fit to exempt on the ground of official duty."

SIR CHARLES JACKSON moved the substitution of the word "Persons" for the words "Brahmins, Mollahs, and others" before the words "actually officiating as Priests in their respective religions."

The Motion was carried, and the Section, as amended, then passed.

Section 277 was passed after verbal amendments, and the Clerk was authorized to make similar amendments in other Sections.

Section 278 was passed as it stood.

Section 279 related to the revision of the Jury list.

After an amendment on the Motion of the Chairman—

MR. SETON-KARR said that he would suggest the addition at the close of this Section of some such words as the following:—

"Any order of the Collector in preparing or revising the list shall be final,"

in order to set at rest the question of an appeal which in this, as in almost every case, was sure to arise.

The Motion was carried, and the Section, as amended, then passed.

Section 280 related to the summoning of Jurors by the Court.

MR. SETON-KARR suggested that it should be made clear by what officer the summons should be served, and

who was to pay for it, if payment were necessary.

After some conversation, an amendment was carried, requiring the Court to "cause *the Magistrate* to summon" the Jurors; and after some further amendments, the Section was passed.

Sections 281 and 282 were passed after amendments.

Sections 283 to 286 were passed as they stood.

Section 287 provided for the names of Jurors being called, &c.

MR. SETON-KARR said that the decision of the Court should be final on the objections raised, and that words to that effect should be inserted in the Section.

The suggestion was adopted, and some further amendments were carried incorporating Sections 287 and 288 into one Section.

Section 289 specified the grounds on which objection might be taken to a Juror, the second and fourth of which were as follows :—

"(2.) Relationship to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused."

"(4.) Any circumstance that shows either prejudice against or favor to either of such persons."

MR. SETON-KARR asked if the word "relationship" was intended to comprise connections by marriage.

After some conversation, the second Clause was omitted, and the fourth Clause was amended as follows :—

"Any circumstance which in the judgment of the Court is likely to cause prejudice," &c.

Sections 290 to 292 were passed as they stood.

Section 293 related to the mode of summoning Jurors when the accused person belonged to one of the specified races.

After some amendments, the further consideration of the Section was postponed.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

The Council adjourned.

Saturday, June 22, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

The Hon'ble Sir H. B. E. Frere, H. B. Harington, Esq., H. Forbes, Esq., C. J. Erskine, Esq.,	The Hon'ble Sir C. R. M. Jackson. and W. S. Seton-Karr, Esq.

BREACH OF CONTRACTS.

THE CLERK reported to the Council that he had received a Petition from certain inhabitants of Bhownugger in Zillah Ahmedabad in the Presidency of Bombay against the passing of a law relating to Breaches of Contract, and had certified that the Petition was not framed in accordance with the Standing Orders, forasmuch as it did not conclude with a distinct prayer.

CATTLE TRESPASS.

THE CLERK presented a Petition of the British Indian Association con-

cerning the Bill "to amend Act III of 1857 (relating to Trespasses by Cattle)."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

INCOME TAX.

THE CLERK reported to the Council that he had received two communications from the Financial Department forwarding certain papers from the Bombay and Straits Governments, suggesting amendments in the Income Tax Act (XXXII of 1860).

SIR BARTLE FRERE moved that the above communications be printed.

Agreed to.

EMIGRATION (SEYCHELLES.)

THE CLERK also reported that he had received a communication from the Home Department on the subject of Emigration to the Seychelles Dependencies of the Mauritius Government.

MR. FORBES moved that the above communication be printed.

Agreed to.

FINES FOR RIOTS.

THE CLERK also reported that he had received a communication from the Bengal Government forwarding certain papers in further illustration of the necessity of a law for fining communities for riots.

MR. SETON-KARR moved that the above communication be printed.

Agreed to.

MR. FORBES presented the Report of the Select Committee on the communication from the Madras Government regarding the levy, in certain cases, of a fine on the Town, District, or Division in which a riot or pillage is committed.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved the first reading of a Bill "to amend Act XXI of 1860 (for the Registration of Literary, Scientific, and Charitable Societies.)" He said that the object of this Bill was to relax the stringency of one of the provisions of Act XXI of 1860, so as to permit the Bengal Military Orphan Society to register itself under that Act. The Bengal Military Orphan Society was a Charitable Society, consisting of 3156 Members, all Officers of the Bengal Army. It was very anxious to register itself under that Act as the only means of suing to recover debts due to it. It had a large printing establishment and large outstandings, and he was sorry to say that there were many persons, who, taking advantage of the inability of the Society to sue, refused to pay their just debts. When this Act was passing through the Committee, he had communicated with one of the Managers, Captain Lees, and asked him to see if the Bill was altogether suited to the circumstances of the Society. He proposed some slight alterations which were adopted, and thought it would work well. But it turned out to be otherwise. The Society had proceeded to get, according to the provisions of the Act, the assent of three-fifths of their number. They succeeded in getting the assent of 1310 Members, which was less than the required number of three-fifths by about 500. Many of the Officers composing the Society were scattered all over Europe and other parts of the world, and the Society had found it impossible to get the assent of three-fifths of their number. The Society was a very useful Society, and one which was well deserving of the support and encouragement of this Council. There was no doubt that it would suffer very large pecuniary loss if it were not allowed to be registered under this Act. Now the constitution of the Society seemed to be peculiarly favorable for the exercise of some indulgence in its favor, as the governing body was an elected body chosen by the different Divisions of the Army, each of which elected a representative resident in Calcutta. Besides these there was a Governor and a Deputy-Governor, and these formed the managing body. He thought that, if the

assent of the Governor and Deputy-Governor and the managing body were taken, that would be all that was necessary, and the Bill was prepared accordingly.

The Bill was read a first time.

GOVERNMENT SEAL.

MR. ERSKINE moved the first reading of a Bill respecting the use of the Government Seal. He said that it would not be necessary to offer more than a few words of explanation regarding the scope and object of this Bill. The Act of 1838 relative to coasting vessels in the Bombay Presidency, provided that every vessel engaged in the coasting trade there should be registered—that a certificate of such registry should be furnished to every owner of a coasting vessel—and that every such certificate should be sealed with the seal of the East India Company. Some time ago a large number of these certificates was forwarded by the Commissioner of Customs in Bombay to the Secretary to Government, in order that they might be sealed as usual. The anomaly then became apparent of requiring that the seal of the East India Company should be affixed on behalf of the Government to public documents after the connection of the Company with the Government had entirely ceased. A reference was therefore made on the subject to the Solicitor to the Government, who advised that the certificates would not apparently have full legal validity unless they were sealed with the seal specified in the law—and that there seemed to be no legal objection to the continued use of that seal for this purpose. At the same time, he suggested that it would be more seemly and convenient that the use of this seal should be formally discontinued, and that an alteration of the law should be obtained. He pointed out that as such an enactment need in no way affect any use of any seal ordered by English Statutes—or, at all events, by any recent English Statutes, such as those of 1858 and 1859, relative to the execution of contracts and issue of securities—it would be competent to the Legislature in this country to effect all that was required. The papers had, therefore, been forwarded from Bombay in order that the Council might be moved to make the requisite alteration in the law. Before making a Motion on the subject, however, it had seemed to him desirable to ascertain whether any similar difficulty had arisen on this side of India, and how it had been met. A reference on that subject had therefore been made through the Secretary to the Government of India—and from his reply it appeared that the question had not been raised here. With his reply, however, the Secretary forwarded an opinion of the learned Advocate-General, in which he expressed concurrence in the views of the Solicitor to Government in Bombay; and advised that an emendatory Act should be obtained, the operation of which—due care being taken not to affect contracts and securities of the kind described in the Acts of Parliament above referred to—should be general, to all parts of this country and to all Indian laws applying to any part of it. In accordance with that advice the present Bill had been framed; and it merely provided that whenever by any Regulation of a Local Government, or by any Act of the Governor-General of India in Council, it was provided that the seal of the East India Company should be affixed on behalf of Government to any document, it should henceforth be lawful on behalf of any Local Government to apply in lieu thereof a seal bearing the designation of such Local Government, and on behalf of the Supreme Government a seal bearing the designation "Government of India." This was the sole object of the present Bill, and he need not therefore longer detain the Council in connection with it. He begged to move that it be read a first time.

The Bill was read a first time.

SETTLEMENT OF ENAMS (BOMBAY).

MR. ERSKINE moved the second reading of the Bill "to facilitate the

adjustment of unsettled claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from payment of such Revenue."

THE VICE-PRESIDENT begged to say that he had not time, since this Bill had been read a first time, thoroughly to study the provisions of the Bill and the papers which had been printed. He should therefore ask the Honorable Member for Bombay, if he had no objection, to let the second reading of the Bill stand over until Saturday next.

MR. ERSKINE said, it was impossible to decline compliance with the request made by the Honorable and learned Vice-President on the ground just stated. The Bill was no doubt an important one, and it was desirable that every Honorable Member should have full time to consider it before he was asked to express an opinion on the subject. He regretted that the printing of the Bill and its accompaniments had not been completed in time to admit of their earlier distribution, and he might take that opportunity of adding that if, on perusal of the printed papers, any Honorable Members should desire further information on any point, or should wish to refer to any other documents in his possession, he should be glad to meet their wishes in as far as it was in his power. At the same time, as the Government of Bombay was very anxious that this Bill should be settled as speedily as possible, he trusted that Honorable Members would be in a position to proceed to the second reading on Saturday next.

MR. FORBES said, he had intended to ask the Honorable Member who had introduced this Bill for some further information than was contained in the Statement of objects and reasons annexed to the Bill. That Statement occupied but five or six lines of print, and referred to the speech with which the Bill was brought in. It was usual, he believed, to state explicitly and concisely in the Statement of objects and reasons, the grounds of any measure, and the objects sought to be obtained by its enactment. But the Statement of objects and reasons annexed to this Bill merely referred to the speech with which it had been introduced; and however ably that speech expressed the views of the Honorable Member, and however attentively Members might have listened to the speech, he must say that it was impossible for Honorable Members to bear in their memories all the particulars of a measure as given in a speech of some considerable length rather rapidly delivered. Moreover, the papers which had been printed in the annexure gave no information as to the grounds on which the measure was introduced, but contained only some merely verbal criticisms by the Legal Remembrancer at Bombay and the Revenue Commissioner of the Southern Division on the different Clauses in the several Draft Acts which had from time to time been prepared. There were, he believed, some very interesting papers on record, particularly some valuable Minutes by the Members of Government, which might probably be circulated among the Members of the Council, although it might be inexpedient to print them; and he thought it very desirable that, in a Bill of so much importance as the one now before the Council, all the information available should be placed at the disposal of Honorable Members. He would therefore express a hope that, before the Bill was further proceeded with, the papers which were at the disposal of the Honorable Mover of the Bill would be shewn to the Members of the Council.

SIR BARTLE FRERE said, he thought it was very possible that his Honorable friend the Member for Bombay had, through an over-abundance of information, been led to adopt the course to which exception had been taken. The subject was one which had for the last twenty-five years occupied an unusual share of the attention of the Bombay Government. It had not only occupied the servants of Government in all departments; but it had been the subject of continual and very ex-

haustive discussion in the newspapers. The difficulty of a person whose attention had been directed to the subject so long and so earnestly, would be in knowing what papers were to be printed and what to be excluded. He believed this had been the case with his Honorable friend, and he (Sir Bartle Frere) confessed to a feeling of admiration of the manner in which he had managed to compress, into so very short a space as he did, in his speech with which he introduced this Bill, the history of the measure and what was desired to be done. However, nothing was more reasonable than the request expressed by the Honorable Member for Madras, and he (Sir Bartle Frere) need not say that whatever papers on the subject of the Bill were in the possession of the Government of India in the Home Department, would be at the disposal of Honorable Members.

MR. SETON-KARR would wish to know whether there was any objection to the production of the Minute of His Excellency the Governor of Bombay of 31st of October 1860. He asked in ignorance, but seeing that Minute referred to as important in a memorandum by the Secretary to Government, he was led to believe that it might contain a summary of the matter under discussion, and as such, with any other selected papers, it might afford the Council the means of arriving at a sound opinion on the subject.

MR. ERSKINE said, he must add a few words to the statement which had been made by his Honorable friend opposite (Sir Bartle Frere.) It was in order especially to anticipate the objection which he had understood the Honorable Member for Madras to entertain to the selection of papers printed with the Bill, that he had stated distinctly before that all papers on the subject which were in his possession were quite at the service of the Honorable Member, and of any Honorable Member who might wish to see them. With reference to the remark of the Honorable Member that the Statement of objects and reasons did not explain the considerations which led the Government of Bombay to conclude that a summary settlement of this question was necessary, he (Mr. Erskine) must repeat, in the first place, what had been stated by his Honorable friend opposite, that it would have been impossible to compress into any reasonable limits a precis of the long discussions which had taken place on that subject; and, in the next place, that he had believed the nature of those discussions and their results to be so generally understood as to render a re-statement of them unnecessary. He had believed that, not only in the Presidency of Bombay, but also in that of Madras, the circumstances which rendered it most inexpedient, and to some extent impracticable, to prolong the system of enquiries formerly enforced in Enam cases, had been thoroughly well known. The objections to a continuance of that system had been publicly urged, not only in this country, but also in Parliament, where the difficulties had been openly recognised. Those difficulties were appealed to in strong terms by the late Governor of Madras when he was arranging not long ago a new Enam settlement for that Presidency; and he had then quoted the announcement made in Parliament that the Home Government had been on the point of forbidding authoritatively the continuance of the Commission system in Madras. It had seemed to him (Mr. Erskine), therefore, that the main question on which the Council would desire information, was not whether a summary settlement of some kind was now desirable, but what were the terms on which an equitable settlement of that kind could be effected? These were the reasons why the statement that appeared with the Bill was so brief. He trusted that no Honorable Member had regarded that brevity as an indication of any want of courtesy or attention to the convenience of Honorable Members, which certainly was not the case. He begged to move that the consideration of the Bill be postponed until Saturday next.

The Motion was carried, and the consideration of the Bill accordingly postponed.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee on the Bill.

THE CHAIRMAN said, the Clerk of the Council was requested last Saturday to prepare a Clause in lieu of Section 293, and had done so. He begged to move now that that Clause, which was as follows, be substituted for Section 293 :—

"When a trial is held in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of Section 269 of this Act, the Court of Session shall, three days at the least before the day fixed for holding such trial, cause to be summoned in the manner prescribed in Section 280 such a number of jurors of the races mentioned in Section 269 as is equal to the total number of jurymen required for the trial if so many of such races be on the jury list of the district. The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of other persons shall have been summoned for jury trials at that Sessions. The names of the persons to be summoned shall be drawn by lot, excluding those who have served within six months unless the number cannot be made up without them. From the whole number of persons returned, the jurors who are to constitute the jury shall be taken by lot in the manner prescribed in Section 286, until a jury containing the proper number of the races mentioned in Section 269 or a number approaching as nearly thereto as possible, has been obtained. The jurors shall be liable to the same objections as any other jurors. If a jury containing the requisite number of the races mentioned in Section 269 be not obtained, the accused person may elect to be tried by the Judge with the aid of assessors, otherwise he shall be tried by the jury obtained by the means aforesaid."

Agreed to.

The postponed Section 271 provided as follows :—

"In a trial by jury before the Court of Session, in which a person not belonging to the races specified in Section 269 shall be tried either alone or jointly with any person belonging to either of such races, one-half of the jury, if the accused person who does not belong to either of such races desire it, shall consist of persons not belonging to either of such races."

THE CHAIRMAN said that, in consequence of the alteration in Section 293, some alteration was necessary in Section 271. He proposed to move the following new Sections in lieu of Section 271 :—

"In a trial by jury before the Court of Session in which a person not belonging to the races specified in Section 269 shall be tried, one half of the jury, if the accused person desire it, shall consist of persons not belonging to either of such races.

In any case before the Court of Session in which a person not belonging to the races mentioned in Section 269 is charged jointly with a person belonging to one of those races, and such last mentioned person claims to be tried by a jury consisting of at least half Europeans or Americans, the person not belonging to either of such races shall, if he desire it, be tried separately."

MR. HARINGTON said, the only objection he saw to the amendment was that it might sometimes lead to a conflict of judgments. If a European and a Native, jointly accused of an offence, were tried separately, according to the latter of the proposed Sections, both trials would be held before the same Judge, who would be bound by the verdict of the Jury in the case which must be tried by Jury, though that verdict might be contrary to his own judgment, while in the case, which would be tried with the aid of Assessors, the decision would rest entirely with the Judge, and he might acquit or convict as he thought proper, though in the other case he had been compelled to do just the reverse on precisely the same evidence.

THE CHAIRMAN said, there could be no objection in that. It would be the same as trying two parties jointly concerned in an offence, but apprehended at different times. If both could not be apprehended at the same time, the trial of the one who was apprehended would not be postponed until the other was apprehended. But whatever the opinion of the Council might be with regard to his amendment, the Sections proposed by him, if carried, would of course be passed subject to

the decision that might be come to on the amendment proposed to be moved by the Honorable Member of Government (Sir Bartle Frere) with regard to Section 269.

MR. HARINGTON said, he had merely suggested the objection.

MR. SETON-KARR suggested that the amendment of the Honorable Member of Government (Sir Bartle Frere) should be first considered.

SIR BARTLE FRERE then moved the omission of Section 269, and the substitution of the following new Section :—

"Criminal trials before the Court of Session in which any person not being a native of India is the accused person or one of the accused persons, shall be by a Jury of which at least one half shall consist, if such accused person so desire it, of persons who are of race or origin as nearly as may be similar to the accused, if so many persons of such race or origin are on the jury list of the District."

MR. FORBES said, the difficulty which he felt in agreeing to this amendment was that it seemed to him it would be almost impossible in practice to carry it out. It would be difficult to decide which was the class of persons most nearly similar in race or origin to the person who might be accused. Supposing an accused person in the Mofussil were a Malay or Chinaman; what class of persons would be most nearly of the same race or origin? Would it be Englishmen, Hindoos, or Mahomedans? Supposing the accused were an African negro; who would be considered most nearly of the same race or origin? Suppose he was an Affghan, (and it was well known that many of that race came in the cold weather to the North-Western Provinces, for the purpose of trade); who was to decide the class of persons most nearly similar to an Affghan in race or origin? He had read a book written to prove that the Affghans were identical with the lost tribes of Israel, and it would, under this Section if it passed, be incumbent on the Judge to decide whether this supposed origin of the Affghans was true, and to try the accused by a Jury of Jews; or whether it was erroneous, and in that case to declare what class of persons were most similar to the accused in race and origin. It was because he believed that several difficulties of a similar nature would be sure to arise, that he thought it useless to pass a Clause which it would be impossible to put into practice.

MR. HARINGTON said, he too had an objection to the proposed amendment of a somewhat similar character to that mentioned by the Honorable Member for Madras, but his objection applied to an earlier part of the Section, though he should be glad to know in what sense the word "origin" to which the Honorable Member for Madras had taken exception, was used. He objected to the words "not being a native of India." He wished some definition of those words in order that it might be clearly understood who were to have the benefit of the Section and who were to be excluded therefrom. One born in any place was said to be a native of that place, but he apprehended that that was not what was intended by the Section, because such a definition of the words which he had quoted, would exclude many persons to whom he understood it to be the wish of the Honorable mover of the amendment to give the benefit of the Section.

MR. ERSKINE said, there was one other point, on which he had no doubt his Honorable friend (Sir Bartle Frere) would be able to afford some explanation. The Local Government were to become empowered to extend the system of trial by Jury to any district they thought proper. It was not at once to take effect everywhere. He did not therefore see why trial by Jury should be made compulsory in all cases where the deceased person was not a native of India, without reference to the district in which the trial was held.

SIR BARTLE FRERE said, there were two points which, he thought, had perhaps be better cleared away in starting. One was as to the general question of trial by Jury. He did not see why every criminal trial for a serious offence should not be by a Jury.

The Chairman

The other point was, that many of the objections which had been taken would be met if the power to claim trial by Jury were left to be claimed by the person put upon his trial. His Honorable friend the Member for Madras had asked why Malays, Chinese, African Negroes, or Affghans should be tried by Jury and by what kind of Jury should they be tried. He (Sir Bartle Frere) would answer this question by asking why the classes specified should not be tried by a Jury? As he said before, it was next to impossible that they should limit the privilege to Europeans and Americans without excluding people of British Colonies who had the same right as British subjects to claim trial by Jury, and who should not be deprived of that right when they came here. But it was impossible to define them in any way which should not include the tribes specified by the Honorable Member for Madras. If any better definition could be offered, he (Sir Bartle Frere) should be ready to adopt it. It was very easy in common parlance to say that this man was a European, and another a native, but it was not so easy to define the difference in legal language. He held in his hand a very able opinion given by the Advocate-General some years ago as to what constituted a man a British subject, and what an European British subject. It appeared that the slightest trace of legitimate British blood after the country came under the direct management of the crown, would suffice to prove British descent and to constitute a man a British subject. This period would carry them very far back in Bombay, which came into the possession of the British Crown about two hundred years ago. It must be remembered that this was not a Code to be in force for the next ten or twenty years only. Its operation might be continued for a century. Consider the great amount of intercourse which would certainly within the next twenty years exist with Australia, the Islands in the Indian Ocean, Africa, and elsewhere. Why, in ten or twenty years you would probably have a large population at our seaport towns, of men who were rather Australians or Africans than Europeans or Americans. Then came the difficulty with which his Honorable friend the Member for Madras had started, as to Malays, Chinese, and Affghans. Now, he (Sir Bartle Frere) did not think that they should be deterred from doing what was reasonable for a large class of the community in the Colonies, because the same right might be given to Chinamen and others. But his Honorable friend said, there was the difficulty of saying of what race or origin should be the persons who were to be on the Jury.

MR. FORBES said, if the proposed Section had said "of the same race or origin if persons of such race or origin are on the Jury list of the District," it would have been a different thing; but it said "of race or origin as nearly as may be similar to the accused," and the difficulty would consist in deciding which race, of several different races residing at one place, was most nearly similar to that of the accused party.

SIR BARTLE FRERE said, if the accused were a Chinaman or a Malay, and there were Chinese or Malays on the Jury list, they would get Chinese or Malays. If there were not, they would get a Jury as nearly as possible answering the same end of having some men on the jury who were of race as near as might be similar to the accused. But these were simple matters which, in working a provision of this sort, would not, he thought, be found an obstacle to the great object intended to be secured. He thought he had already noticed the objection of his Honorable friend the Member for Bombay.

MR. ERSKINE said, perhaps he had not sufficiently explained his objection. It was an objection not to the amendment only, but also, he admitted, to some extent to the Section as it originally stood. Supposing, for instance, that in some remote district in which trials were generally conducted by a European Judge and not by Jury, an unknown native of some foreign country were brought up to be tried for any offence; he must in all cases be

tried by a jury. He might claim that one-half of the Jurors should be of his own race if so many could be found. But even if none of his own race should be found, he must be tried by a Jury, and not by the European Judge. He was not prepared to say that this would always be regarded as an advantage.

SIR BARTLE FRERE said, he could not admit that it was any objection that a man should be tried by a Jury in a case of that kind. For instance, an Affghan in Central India might claim to be tried by a Jury. For the same reason that you allowed a Jury to an American from California, he (Sir Bartle Frere) did not see why it should not be allowed to an Affghan or to any one else. As far as his own experience went, he must say that he felt it to be an enormous advantage to have the assistance of even a very inferior Jury, bound to hear the evidence of the witnesses, and to give a verdict in the case. Believing, therefore, that trial by Jury was a great privilege, and not seeing any difficulty, as many Honorable gentlemen seemed to see, in its extension, he was not at all afraid to make the provision general.

MR. HARINGTON said, the Honorable Member of Government seemed to think that a person born in Australia of European parents would not be entitled to the benefit of the Section as it now stood. He (Mr. Harington) would not undertake to say that this was a right construction; but assuming that it was, it would follow that the same construction of the Honorable Member's amendment would debar any European or American born in India of the benefit of that amendment, which clearly could not be intended. He preferred the Section as it stood, and thought that it was open to fewer objections than the amended Section.

THE CHAIRMAN said, he thought that the objections pointed out to the amendment were such that it would be almost impossible to get over them. The matter was one that required to be dealt with in such a manner as would make the Code practicable now, and without looking to the probability of the Code continuing in force for two or three centuries. If the Code should be found, within a quarter of a century or even one-eighth of a century, to require amendment, there would be no difficulty in amending it according to the circumstances which might then exist. He thought that, considering the difference between Europeans and Americans and Natives, it was nothing but fair to allow an accused person, if a European or American or Native, to claim to be tried by a Jury of which one half should be of his own race. But he certainly felt the force of the observations of the Honorable Member for Bombay. Now, the Act did not provide that all trials before the Sessions Court should be by Jury. But Section 268 empowered the local Government to extend the system to any District they thought proper. If the local Government should not exercise that power in any District, then he would not allow a prisoner, be he European or American, to claim to be tried by a Jury. He would give him trial by Jury only in Districts to which the system might be extended by the local Government. He would also in such cases entitle the prisoner to be tried by a Jury of half his race, if he claimed it; or if he did not so elect, then he would leave him to be tried by the Judge. If the prisoner declined to claim to be tried by a Jury at all, or if a Jury such as might be claimed by the prisoner could not be obtained, he (the Chairman) in that case also would leave him to be tried by the Judge with the aid of assessors. He must say, however, that he felt that very great difficulty would arise in carrying out the amendment now before the Council, and he should therefore vote against it. If it should not be carried, he proposed to move the substitution of the following new Section for Section 269:—

"Criminal trials before the Court of Session in which a European (not being a British subject) or an American is the accused person or one of the accused persons, shall be by Jury, and in such case the Jury, if the accused person desire it, shall consist of at least one-half

of Europeans or Americans, if such a Jury can be procured. Provided that in any district in which the local Government shall not have ordered that all trials, or trials for all offences of the class within which the trial about to take place falls, shall be by Jury, the accused person may elect to be tried without Jury."

SIR BARTLE FRERE'S Motion being then put, the Council divided—

Aye 1.	*Noes* 6.
Sir Bartle Frere.	Mr. Seton-Karr.
	Sir Charles Jackson.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the Motion was negatived.

THE CHAIRMAN'S amendment was then proposed.

MR. SETON-KARR said that he agreed entirely with what had been adduced by way of argument as well as by way of amendment by the Chairman; and that he merely wished to point out that it was desirable in the latter part of the amendment to provide that the Europeans, of whom the Jury might consist, might be European British subjects as well as Europeans who could not claim that privilege. It might be easy to collect a Jury of the former, but not so a Jury of the latter.

In accordance with the above suggestion, the words "whether British subjects or not" were inserted after the words "shall consist of at least one-half of Europeans," and the Section as amended was then passed.

SIR BARTLE FRERE proposed the insertion, after the word "American" in the foregoing Section, of the words "or a person of European or American extraction and born in any European Colony."

MR. HARINGTON said that if, as he understood, India was not a British Colony, a most respectable class would be excluded from the benefit of the proposed amendment. A country-born or Eurasian would not get the benefit of trial by Jury unless it happened that his father was a European British subject and he himself was born in wedlock. As an illustration of the effect of such a distinction, he would just observe that if a Native woman were taken to Australia and there gave birth to a boy, the father being a European but not married to the mother, the boy would have the benefit of the amendment because he was born in Australia, but not so if he were born in India. He would object to any distinction such as that which he had just noticed, and in the event of the amendment being carried he should be glad if a Clause could be introduced which would enable Eurasians to claim to be tried by Jury.

MR. ERSKINE said, the observation of the Honorable Member for the North-Western Provinces was one in which he concurred up to a certain point. It showed how difficult it would be to provide for all persons of mixed races. But he could not go the whole length of the argument of the Honorable Member; because, although it might be impossible specially to provide for persons of such races if born in this country, that would not be conclusive against a provision for similar persons who might be strangers to this country, and who on that ground might be proper subjects for a special privilege of this kind.

The amendment being put, the Council divided:—

Ayes 3.	*Noes* 4.
Sir Charles Jackson.	Mr. Seton-Karr.
Mr. Erskine.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
	The Chairman.

So the motion was negatived.

THE CHAIRMAN'S two new Sections in lieu of Section 271 (already noticed above) were then put and carried.

Section 273, as settled last Saturday, provided as follows:—

"If the Jury are unanimous in a verdict of guilty, the accused shall be convicted. If a majority of the Jury find a verdict of guilty and the Court concur in such finding, the accused shall be convicted. If only a majority of the Jury find a verdict of guilty, and the Court does not concur in such verdict, the accused shall be acquitted. If the Jury or a majority of the Jury find a verdict of not guilty, the accused shall be acquitted."

SIR CHARLES JACKSON said, he wished to call the attention of the Council to that part of the above Section which provided that "If only a majority of the Jury find a verdict of guilty, and the Court does not concur in such verdict, the accused shall be acquitted." He had been a party to that amendment; and he hoped he should not be considered infirm of purpose if he said that he now doubted the wisdom of that provision. When they abandoned the English law with respect to Juries and the old English number of twelve, the Council had wandered into a maze of experiments, and that must be his apology for his apparent vacillation. He doubted the policy of committing to a bare majority of a small Jury, like that of five for instance, the power of acquitting a prisoner. Every person who had to deal with Juries must know that generally one or two Jurors directed the whole Jury, and in this country, where we must be prepared for a great deal of bribery, corruption, and other external influences being brought to bear upon Jurors, he thought it necessary to be cautious. If one strong-minded man under such influence were on the Jury, how easily might he not persuade two or three other Jurors to find a verdict of acquittal? He thought it would be prejudicial to the administration of Criminal Justice if they allowed the opinion of a bare majority in so small a number to carry with it a verdict of acquittal. He proposed therefore to omit all the words from "If only a majority" to the end of the Section, and to substitute the following words:—

"It the Jury are unanimous in a verdict of not guilty, the accused shall be acquitted. If the Jury shall consist of five persons, and a majority of four find the accused not guilty; or if the Jury shall consist of seven persons, and a majority of five find the accused not guilty; or if the Jury shall consist of nine persons, and a majority of six find the accused not guilty; the accused shall be acquitted, and the Judge shall not receive a verdict of acquittal unless it be unanimous or found by such majority as last aforesaid."

MR. HARINGTON said, that the amendment proposed by the Honorable and learned Judge went in the direction which was so strongly advocated by him when the Bill was formerly before a Committee of the whole Council; and, regarding that amendment as a great improvement on the Section as settled on Saturday last, he was very willing to support it. The Select Committee, to which the Bill was originally referred, objected to allow a verdict of acquittal by a Jury to prevail under any circumstances against the conviction or judgment of the presiding Judge. In speaking in favor of the provision proposed by the Select Committee, he observed that there was a difficulty in making any other provision without giving a degree of power to Native Jurors, with which for the present at least, it was thought that they could not be safely entrusted. He had considerable doubts as to the expediency of the further Section about to be proposed by the Honorable and learned Judge, requiring a new trial to be held whenever the prescribed majority could not be obtained. He thought that new trials should be avoided as much as possible; they were very harassing to the witnesses, often operated unfairly towards the accused person, and were open to other objections. Instead of being the exception, as ought to be the case, he saw reason to fear that the practical effect of the rule proposed by the Honorable and learned Judge would be to make them the rule. He also felt great difficulty in accepting the proposition that, although the Judge might concur with the majority of the Jury in acquitting the prisoner, there must nevertheless be a new trial, unless the majority consisted of a certain number. He thought that if five out of nine Jurors acquitted the accused, and the Judge concurred in the finding of not guilty by that number of Jurors, his opinion should carry as much weight as the opinion of the remaining Juryman required to make up the majority of six Jurors out of nine to entitle the accused to an acquittal; and that in such case justice required, not that the accused should be subjected to a

new trial, which might result in his conviction, but that he should be at once acquitted and discharged.

SIR CHARLES JACKSON pointed out that in cases in which the Judge might not concur with the majority of the Jury, that majority being below the prescribed number, it would be, in fact, an expression of opinion on the part of the Judge that he thought the prisoner guilty. This would be very hard upon the accused, who must, when such was the case, undergo a new trial and be tried before the same Judge. The Jury upon the new trial might know what was the opinion of the Judge, and their verdict might be affected by that knowledge, and, at all events, the Judge would have committed himself as to the guilt of the prisoner. It was to avoid this that he had proposed the rule to which the Honorable Member for the North-Western Provinces objected.

MR. HARINGTON admitted there was much force in what had just been stated by the Honorable and learned Judge. He said it was a choice of difficulties, and perhaps upon the whole the rule proposed by the Honorable and learned Judge was the fairest and the least objectionable that could be adopted.

MR. SETON-KARR said that, when this question was before the Council last week, he partly agreed with, and partly differed from, the Honorable and learned Judge. As he now understood that the Jury system would work better with the proposed changes, and as the object of the amendment was only to facilitate the working of the Jury Act, and as it was also the avowed wish of the Council to introduce the part of the Code which related to Juries, by degrees into the country, and as he thought the amendment, having this for its object, was a safe and a cautious amendment, he would venture to give it his support.

THE CHAIRMAN said, he was disposed to concur in the amendment of the Honorable and learned Judge. He did not share in the apprehensions entertained by the Honorable Member for the North-Western Provinces that, if that amendment was adopted, it would give rise to many new trials or make them the rule instead of their being the exception. In the Supreme Court the Jury were required to be unanimous in their verdict, and if they could not agree in their verdict, a new trial was necessary; but such a contingency very rarely occurred, though of course it was much more likely to happen where a unanimous verdict was required than under the rule proposed by the Honorable and learned Judge. He admitted that the amendment was open to some objections, but looking to the circumstances of the country, he did not know that any better course than that proposed could be adopted.

SIR CHARLES JACKSON'S amendment was put and carried.

THE CHAIRMAN then said, he thought that a corresponding alteration was necessary in the first part of the Section, with this difference that, whereas the concurrence of the Judge was not necessary in a verdict of acquittal if it was unanimous or found by the majority specified in the amendment just carried, the concurrence of the Judge should be indispensable in a verdict of guilty. He should therefore move the omission of the first part of the Section and the substitution of the following words :—

"If the Jury shall consist of five persons, and a majority of four find the accused guilty, or if the Jury shall consist of five persons, and a majority of four find the accused guilty, or if the Jury shall consist of seven, and a majority of five find the accused guilty; or if the Jury consist of nine persons, and a majority of six find the accused guilty, the accused shall be convicted if the Judge concur in such finding. If the Judge shall not concur in such finding, the accused shall not be convicted thereon."

The Motion was carried, and the Section as amended then passed.

Section 294 provided as follows :—

"If, in the course of a trial by Jury at any time prior to the finding, any Juror shall, from any sufficient cause, be prevented from attending through the trial, or if any Juror shall absent himself, and it shall not be possible to

enforce his attendance, a new Juror shall be added, or the Jury shall be discharged, and in either case the trial shall commence anew."

SIR CHARLES JACKSON proposed to omit all the words after the word "attendance," and to substitute the words

"or if the Jury shall be unable to come to an unanimous finding or to a finding of not guilty by such a majority as is specified in Section 273, the Jury shall be discharged and the trial shall commence anew."

After some conversation the consideration of the Section was postponed.

Section 295 was passed as it stood.

Section 296 provided a penalty of 50 Rupees for non-attendance of a Juror or Assessor.

After a verbal amendment, on the Motion of the Chairman—

MR. SETON-KARR moved that the limit of 50 Rupees in this Section be extended to 100 Rupees. When he considered that this Section was meant to apply not only to Jurors who failed to attend at first, but to Jurors who, having once attended, absconded and could not be found, he thought that this limit was not excessive. It was only the half of the amount prescribed for contempt of Court, and it might sometimes be necessary to impose a heavy fine on Jurors who absconded or absented themselves without excuse. He trusted, therefore, that the Council would support him in the proposed extension of the fine.

The Motion was carried, and the Section as amended then passed.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

REGISTRATION OF ASSURANCES.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to provide for the registration of assurances."

Agreed to.

The Council adjourned.

Saturday, June 29, 1861.

PRESENT :

The Hon'ble Sir H. B. E. Frere, *Senior Member of the Council of the Governor-General,* Presiding.

Hon'ble Major General Sir R. Napier,	C. J. Erskine, Esq.,
H. B. Harington, Esq.,	Hon'ble Sir C. R. M. Jackson,
H. Forbes, Esq.,	and
	W. S. Seton-Karr, Esq.

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from the Landholders and Commercial Association of British India, from the Bengal Chamber of Commerce and from the Calcutta Trades' Association, praying that a general law may be passed, punishing criminally fraudulent breaches of contract, when advances have been received to perform work or service, or to deliver produce up to a certain value.

SIR BARTLE FRERE moved that the Petition be printed and referred to

the Select Committee on the Bill on the same subject.

Agreed to.

SMALL CAUSE COURTS.

THE CLERK presented a Petition from the Landholders and Commercial Association of British India, praying that Act XLII of 1860 (the Small Cause Act for the Mofussil) be so modified, as to enable the party who obtains a decree under it to enforce immediate execution of the same by warrant, either against the goods or against the person of the judgment-debtor.

MR. HARINGTON moved that the Petition be printed.

Agreed to.

BREACH OF CONTRACT.

THE CLERK reported to the Council that he had received a communication from the Foreign Department, forwarding for the purpose of being laid before the Select Committee on the Bill for the punishment of fraudulent breaches of contract, a communication from the Commissioner of Pegu.

SIR BARTLE FRERE moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

SALTPETRE.

THE CLERK reported to the Council that he had received a communication from the Government of Bengal, concerning the Bill "to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported that he had received a further communication from the Military Department, relative to the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

REGISTRATION OF ASSURANCES.

MR. ERSKINE presented to the Council a communication which he had received from the Bombay Government, and moved that it be printed and referred to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

BRANCH RAILWAYS, &c.

MR. SETON-KARR rose for the purpose of moving the first reading of a Bill "to provide for the construction, by companies, and by private persons, of Branch Railways, iron tram-roads, common roads, or canals, as feeders to public Railways."

He said—Sir, the object of this Bill is to stimulate and afford assistance to private capital and private enterprise, in aid of great lines of public Railway, by affording to Societies and individuals all due facilities for occupying lands required for such purposes, under the provisions of Act VI of 1857.

At present, that Act is applicable only to lands taken for public purposes. It is proposed to make it applicable to lands required by private companies and persons, under the enactment which I now bring forward. It being no object of the Government to encourage rash projects likely to prove abortive from the want of funds, it is proposed that the local Government shall have power to satisfy itself that the applicant has sufficient funds to complete the whole line; as well as that the line is likely to prove expedient and advantageous to the community at large. But, when these primary requirements shall have once been complied with, every reasonable facility will be afforded to the promoter to complete and carry out their scheme. With this view, Sections 2 to 6 of

the Bill carefully provide for the grant of a provisional certificate, empowering the promoter to enter on the line, in order to make a preliminary survey thereof, but allowing him to cut down no crops or trees, invade no premises; damage no property, and injure no rights. They provide, further, for the appointment of Commissioners on the part of Government, who shall receive suggestions from any persons whose interests may be affected by the proposed line. They provide for the issue of a notification to all interested in the Government Gazette ; for the consideration, by the Commissioners, of the propriety of deviating from the line if deviations or variations shall be proposed ; and finally, for the submission to Government of a full and conclusive report, which shall enable it to decide on giving its permanent sanction to the whole scheme.

Thus far as regards the requirements of the community. As regards the public Railway to which it is intended that those lines shall be feeders, Section 7 provides that due notice shall be given to the Public Company, and if the line be a Branch Railway intended to form a junction with the public Railway, or to have rails of the same gauge, the public Railway Company shall be called on to show cause why they should not construct the necessary sidings, wharves, and godowns, for the reception of the traffic, or for the convenience of the community.

Under Section 13 the Government may call on the Company to form a junction, if necessary ; but my own idea is that, practically, the result will be, either that the public and private Company will share the expense in equal portions, or that the outlay will be assessed rateably according as one company or the other may derive the greater benefit from the proposed scheme.

At the conclusion of the Report, the Government may authorize the land to be taken under Act VI of 1857, and care will be taken to provide for compensation to the owners of land so taken up under the authority conferred by this Act.

Mr. Stton-Karr

The Act next provides that the line shall be made available for the public and for the conveyance of passengers and traffic, and this may be done in one or both of two ways ; either the owners or lessees shall be called on to furnish an adequate supply of conveyances for the public—or else persons, other than the owners or lessees, may bring their own vehicles and means of transport on the line ; but here, one proviso is most important, which is, that the vehicles and means of transport shall not be inconsistent with the scope, nature, and object of the line. The meaning of this proviso is to check unreasonable and extravagant demands. Men are not to claim permission to run a locomotive engine over a metalled or unmetalled road, nor to be conveyed at the rate of speed of a parliamentary train over a tramway destined for vehicles which move at four miles an hour and which carry bulky materials ; nor again will any one have a right to introduce a paddle-wheel Steamer into the waters of a canal, shaking the foundation and injuring the banks of that which was only excavated for a common track boat.

Finally, Government is to have power to regulate the rates of conveyance, and to inspect the means of transport, to supervise the whole action of the line, to direct that a junction shall be formed when a junction is part of the scheme, and to affix stated penalties for the infringement of rules.

If the proposed line shall be a Branch Railway, then the provisions of Act XVIII of 1854 are intended to apply to the same.

One other proviso is worthy of notice. Government may interfere to direct that the private Company shall provide drains for the proper drainage of the country, and shall construct or preserve in their integrity all such works and rights of way as the community may lawfully demand ; but this interference is only to be permitted while the line is actually in process of construction.

The community must look to its own interests before the line is actually completed, for it would be most inju-

rious and vexatious that any one should claim to have a bridge in this place, or a tunnel in another, twelve months after the line had been in full working. By another Section the right to mines is expressly reserved in favor of those proprietors whose surface lands may be taken under the provisions of that Act; and on the other hand, if the mines are worked, they must be worked in a manner neither detrimental to the traffic, nor injurious to the lives of the travelling community. One class of cases, however, is not provided for by this Act, and that is, the case of Railways constructed by Companies or individuals, but not in connection with any existing public line. Such lines, if required, as the wants of the community expand, and if intended to run solely between their own termini, must be provided for by separate legislation. But it was not thought essential to anticipate this state of things in the present Bill. I would add, Sir, that in preparing and revising this Bill, I have been aided by the practical knowledge and engineering science of Lieutenant-Colonel Beadle. Some Sections have been borrowed from the English Acts bearing on the construction of Railways; for some of the technical phraseology I have been indebted to Mr. Purdon, the able Engineer of the Eastern Bengal Railway; and several of the amendments have been suggested by a gentleman of inexhaustible energy in all that relates to the spread of private enterprise throughout the length and breadth of Bengal. It has been thought better to invest the Government with power to decide on every application to occupy land, than to require persons to apply, in each instance, to the legislature for a separate enactment. The Government are really anxious to meet the wants of the community, and will probably be the best judges in each instance of the propriety of refusal or of compliance.

Sir, I firmly believe that this Bill, to whatever scrutiny it may be subjected, or whatever amendments it may receive at the hands of your Council, will, if passed, in reality cause damage to no private interest, but that, on the contrary, every estate will be benefited through which any branch line may be constructed. The first scene of the operations of this enactment will, I understand, be the extensive coal fields situated at no great distance from the great public lines of Railway, which are now running through the important districts of Burdwan and Beerbhoom. But the time may come when this law shall have a more constant operation, and produce a wider and more important effect. It may bestow a deserved prominence on scores of places which are now lying, as it were, with undeveloped resources, or with names unknown. It may, I hope, stimulate to a healthful emulation the energies of active capitalists or of opposing societies. It may cause ten furnaces to glow where one only is now at work. It may add to the wealth, increase the traffic, and multiply the trains which are now, or shortly shall be, running on the great public lines now under process of completion; lines which are guaranteed on the faith, the stability, and the resources of the empire; and which are as essential to the maintenance of our political ascendancy, as they are to the full development of our superiority in commerce. In times of anxiety, such as we have been lately experiencing, owing to tropical famine, or tropical inundation, this enactment may cause the superfluity of one district to minister to the wants, to supply the deficiencies, and to mitigate the horrors of scarcity in another; and in happier times, which shall be free from anxiety and full of progress, it may be the means of uniting the remote and unconnected provinces of this vast Empire in the gentle, but firm, compact, and indissoluble bonds of material prosperity and of ever-growing civilisation.

The Bill was read a first time.

SETTLEMENT OF ENAMS (BOMBAY).

The Order of the Day being read for the second reading of the Bill "to facilitate the adjustment of unsettled

claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay, exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such Revenue"—

MR. ERSKINE said that, although he was reluctant to acquiesce in any further postponement of the second reading of this Bill, and although the Government of Bombay, as Honorable Members were aware, was anxious that the Bill should be proceeded with as rapidly as possible, still as it had been postponed on Saturday last at the request of the Honorable and learned Vice-President, as he had expressed a wish to consider the papers which had been circulated to some Honorable Members and lately forwarded to him, and as he was unavoidably absent to-day, owing to his engagements in the Vice-Admiralty Court, he (Mr. Erskine) thought he should best meet what he believed must be the feeling of the Council, if he acquiesced in the postponement of the Bill for one week more. He should therefore propose that the consideration of the Bill be postponed till Saturday next.

Agreed to.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved the second reading of the Bill "to amend Act XXI of 1860 (for the registration of Literary, Scientific, and Charitable Societies)."

The Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

MR. HARINGTON said, the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" stood next in the Orders of the Day, but as the Sections of that Bill which remained to be settled had been reserved for separate consideration, and the Honorable and learned Vice-President had taken a prominent part in the discussion on those Sections, he (Mr. Harington) thought it unadvisable that they should proceed with the Bill in his absence. He begged, therefore, to move that the consideration of the Bill be postponed till Saturday next.

Agreed to.

STAGE CARRIAGES.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "for licensing and regulating Stage Carriages"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows :—

"Every Carriage drawn by one or more horses which shall ordinarily be used for the purpose of conveying passengers for hire on journies for a greater distance than twenty miles to or from any place in British India, shall, without regard to the form or construction of such Carriage, be deemed to be a Stage Carriage within the meaning of this Act."

SIR CHARLES JACKSON said, the Section, as it stood, was not sufficiently explicit. The words "on journies for a greater distance than twenty miles" would not meet every possible case.

MR. HARINGTON said, the words referred to by the Honorable and learned Judge had been introduced into the Bill in order to exclude from the operation of the Bill the hack carriages used in the Presidency Towns and their vicinity, and the conveyances let out for hire at some of the up-country stations. Such, for instance, as the "Ekkas" which were much used at Patna and Dinapore, and to which attention had been called by the Commissioner of the Patna Division. The present Bill was not intended to apply to such conveyances.

MR. SETON-KARR said that the limit of twenty miles might exclude small branch lines in connection with

great roads or lines of Railway. For instance, there might be a branch road of nineteen and a half miles on which such Carriages might run to and from a Railway, and this Section would omit it altogether and allow the Carriages to escape. He would suggest that the limit be fixed at twelve miles.

After some conversation, Sir Charles Jackson moved the omission of the words "on journies for a greater distance than twenty miles," and the addition of the following proviso :—

"Provided that this Act shall not apply to Carriages not ordinarily used for journies of a greater distance than twenty miles."

The Motion was carried, and the Section, as amended, then passed.

Section II provided as follows :—

"No Carriage shall be used as a Stage Carriage unless licensed by the Magistrate of the District or place in which the Head Office of the Proprietor of such Carriage is situate. If such Head Office be in any Presidency Town, the license shall be granted by the Chief Commissioner of Police of such Town."

MR. HARINGTON moved the omission of all the words from "the Magistrate of the District" to the end of the Section, and the substitution of the words "a Magistrate or by the Chief Commissioner of Police of a Presidency Town." He said that, although the Head Office of some of the Calcutta Dawk Companies was in Calcutta, their carriages started from Raneegunge, and it might cause inconvenience to those Companies if they were obliged to bring their carriages to Calcutta for the purpose of having them licensed.

The Motion was carried, and the Section, as amended, then passed.

Sections III and IV provided as follows :—

"III. The Magistrate or Chief Commissioner, to whom the application for a license of a Stage Carriage is made, may refuse to license the same, if he shall be of opinion that such Stage Carriage is unserviceable, or is unsafe, or unfit for public accommodation or use.

IV. Every license shall be numbered and contain the following particulars, namely,

The number of such license.

The name and residence of the proprietor of the Stage Carriage, and the place at which his head office is held.

The number of passengers permitted to be conveyed thereby.

The weight of luggage permitted to be carried.

The number of horses to be used in drawing the Stage Carriage.

The name of the place at which the Stage Carriage is licensed."

After some discussion, the following words were added to Section III (on the Motion of Sir Charles Jackson), and Section IV was thereupon struck out as unnecessary :—

"If a Magistrate or Chief Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the Stage Carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such Carriage, the number of Horses by which such Carriage is to be drawn, and the name of the place at which such Stage Carriage is licensed."

Section V was passed after amendments.

Section VI was passed as it stood.

MR. HARINGTON moved the introduction of the following new Section after Section VI :—

"The proprietor of any licensed Stage Carriage, who shall let such Stage Carriage for hire without the particulars specified in Section III being painted on such Carriage in the manner directed in the last preceding Section, shall be liable to a fine not exceeding one hundred Rupees."

Agreed to.

Section VII provided as follows :—

"Whoever uses or lets for hire any Stage Carriage without the same being licensed as provided by this Act, shall be liable to a fine not exceeding five hundred Rupees."

MR. HARINGTON moved the omission of the words "uses or" in the beginning of the Section. He pointed out that, if the words proposed to be omitted were retained, the Section

would apply to the travellers by, as well as the owners of the Stage Carriages, which could not be intended.

Agreed to.

MR. HARINGTON moved the omission of the words "to a fine not exceeding five hundred Rupees" at the end of the Section, and the substitution of the following words :—

"on a first conviction to a fine not exceeding one hundred Rupees, and on any subsequent conviction to a fine which may extend to five hundred Rupees."

The Motion was carried, and the Section, as amended, then passed.

Section VIII provided as follows :—

"Any proprietor of a licensed Stage Carriage who permits such Carriage to be drawn by a less number of horses, or who permits a larger number of passengers, or a greater weight of luggage to be carried by such Stage Carriage than shall be provided by the license, shall for every such offence be liable to a fine not exceeding five hundred Rupees. In every case where such Stage Carriage shall be proved to have been drawn by a less number of horses or to have carried a larger number of passengers or a greater weight of luggage than shall be provided by the license, the proprietor of such Carriage shall be held to have permitted such offence unless he shall prove the contrary."

MR. HARINGTON moved the omission of the words "for every such offence be liable to a fine not exceeding five hundred Rupees" at the end of the first sentence, and the substitution of the following words :—

"on a first conviction to a fine not exceeding one hundred Rupees, and on any subsequent conviction to a fine which may extend to five hundred Rupees."

Agreed to.

SIR CHARLES JACKSON objected to a proprietor being made liable for an offence under this Section unless he knowingly permitted the commission of the offence. He also thought that the Section should apply not only to the proprietor, but to the agent of the proprietor and the driver who were more likely to connive at the commission of the offences specified in the Section than the proprietor who would generally be at a distance from the spot where the offence might be committed. Take the driver for instance ; he might be induced by means of a present or a threat to permit the carriage to be overladen at some place between two stations, and the proprietor might be totally unaware of such offence, and yet the Section would require him to prove his innocence. He should propose the insertion of the words "or agent of a proprietor or any driver" after the word "proprietor" in the first line, and of the word "knowingly" before the word "permits" in the second and sixth lines.

Agreed to.

The question being put that the Section, as amended, stand part of the Bill—

SIR CHARLES JACKSON said, it now appeared to him that there was an incongruity between the two parts of the Section as amended. The first part threw the onus of proof on the complainant, by requiring him to prove that the proprietor *knowingly permitted* the offence. The latter part, however, threw the onus on the proprietor, by holding him to have permitted the offence *unless he should prove the contrary.* If it was necessary to show that the proprietor knowingly permitted the offence, then the latter part of the Section was unnecessary.

MR. HARINGTON said, the question now before the Committee was that the Section, as amended, should stand part of the Bill, and he submitted that that question should be put to the vote. If the Motion was carried, it would be open to any Honorable Member to move that the Committee go back to the Section.

THE CHAIRMAN said, in strictness, the Honorable Member for the North-Western Provinces had a right to insist upon that question being put to the vote, but it would be open to the Honorable and learned Judge, after that question was decided, to move that the Section be re-considered.

The question being put that the Section, as amended, stand part of the Bill, the Council divided :—

Ayes 5.	*Noes* 2.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	
Sir Robert Napier.	
The Chairman.	

So the Motion was carried.

SIR CHARLES JACKSON then moved that the Section be re-considered.

MR. HARINGTON said, the first part of the Section proposed to deal with a fact. A carriage was found drawn by a less number of horses than the license allowed, or carrying a greater number of passengers or a larger quantity of luggage, and the latter part of the Section authorized the Magistrate, when such was the case, to proceed at once against the proprietor of the carriage as if he had himself committed the offence charged. In the absence of the driver, this would probably be generally the course which would be pursued. It would rest with the proprietor to shew that he did not permit the act complained of by adducing any evidence on the point that it might be in his power to bring forward. He (Mr. Harington) could not perceive that the first and second parts of the Section were inconsistent the one with the other. The latter part of the Section was based upon the old maxim *qui facit per alium facit per se*, which was strictly applicable in the present case, and it was absolutely necessary to enforce it in order to render the Bill effectual.

MR. SETON-KARR said that, on the whole, he felt inclined to agree with the Honorable Member for the North-Western Provinces. He could see no incongruity in the two parts of the Section. The first part referred to the fact which the complainant on the part of Government, or the informer, was held to prove. The latter part threw on the proprietor the onus of proving that he had no such knowledge. Thus the two parts would be harmonious, the first relating to the bare fact, the latter to the disproval of guilty knowledge. For the sake of perspicuity, however, he would move the insertion of the word "knowingly" before the word "permitted" near the end of the Section, and thus make the Section harmonious and complete.

After some further discussion, Mr. Seton-Karr's amendment was put and carried.

SIR CHARLES JACKSON then moved the omission of the words "unless he shall prove the contrary" at the end of the Section, and the substitution of the following words :—

"unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution, and had made reasonable provision to prevent the commission of the offence."

The Motion was carried, and the Section, as further amended, then passed.

Sections IX and X were passed as they stood.

Section XI provided as follows :—

"In any station in which a Magistrate or other Officer exercising the powers of a Magistrate shall reside and be, any Police Officer may seize any Stage Carriage with the horse or horses harnessed thereto, if the full particulars of the license of such Stage Carriage be not distinctly painted on such Stage Carriage in the manner provided in Section V of this Act. Such Carriage with the horse or horses harnessed thereto, shall be taken without delay by such Police Officer before such Magistrate or other Officer as aforesaid, who shall hear and determine the complaint of such Police Officer in a summary way ; and, if thereupon any fine is imposed by such Magistrate or other Officer as aforesaid, such Stage Carriage and horse or horses may be detained for twenty days as security for the payment thereof, and if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale, and the surplus (if any), if not claimed within a further period of two months from such sale, shall be forfeited to the State. If the proceeds do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided."

Several amendments were carried (principally on the Motion of Sir Charles Jackson) which made the

Section, as finally passed, run as follows :—

"In any station or place in which a Magistrate shall reside and be, any Police Officer may in any place within two miles of the office of such Magistrate seize any Stage Carriage with the horse harnessed thereto, if the full particulars of the license of such Stage Carriage be not distinctly painted on such Stage Carriage in the manner provided in Section V of this Act. Such Carriage with the horse harnessed thereto, shall be taken without delay by such Police Officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such Police Officer, and, if thereupon any fine is imposed by such Magistrate, and such fine is paid, such Stage Carriage and horse shall be immediately released, and if such fine be not paid, such Stage Carriage and horse may be detained for twenty days as security for the payment thereof, and if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges, incurred on account of the detention and sale, and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse, and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State. If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided."

Section XII was passed as it stood.

Section XIII provided for the penalty being in certain cases recoverable from the proprietor, there being a proviso, empowering the Magistrate to discharge the proprietor, if the proprietor should prove to the satisfaction of the Magistrate "by sufficient evidence *not resting on his own testimony*," that the offence was committed without his privity or knowledge, &c.

SIR CHARLES JACKSON proposed the omission of the words "not resting on his own testimony," as going beyond the law of evidence, which allowed a defendant to give evidence on his own behalf.

MR. HARINGTON said, he did not think the words were open to the objection taken by the Honorable and learned Judge. It was not proposed to exclude the evidence of the proprietor, but merely to provide that independent proof should be required before he could be exonerated, which, as the proprietor was liable to be put in the place of the accused, did not appear unreasonable or improper.

After some further discussion, the Council divided—

Ayes 5.	*Noes* 2.
Mr. Seton-Karr.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. Erskine.	
Sir Robert Napier.	
The Chairman.	

So the Motion was carried, and the Section, as amended, then passed.

Sections XIV to XVI were severally passed after amendments.

Section XVII was passed as it stood.

Section XVIII was passed after a verbal amendment.

Section XIX was passed as it stood.

Section XX was passed after a verbal amendment.

Section XXI was the Interpretation Clause.

A verbal amendment was made in the definition of "Magistrate."

The definition of "horse" after verbal amendments was transposed, so as to stand immediately before the definition of number.

The definition of "British India" was passed after the omission of the proviso.

A verbal amendment was made in the definition of gender; and the Section, as amended, was then passed.

MR. HARINGTON proposed the introduction of the following new Section at the end of the Bill :—

"Except in the Presidency of Fort St. George and the Settlement of Prince of Wales' Island, Singapore, and Malacca, this Act shall have effect on and after the 1st day of September 1861. In the said Presidency and Settlement respectively the Act shall have effect from the day when it shall be extended thereto by the local Government, by an order published in the Government Gazette."

SIR CHARLES JACKSON asked, why such an exception should be made in favor of the Presidency of Fort St. George. He had travelled in Madras himself, and was perfectly willing to admit the superiority of the mode of travelling there over that practised in Bengal. He thought the term "be-

nighted Presidency," as applied to Madras, was not a correct one, and that in that respect, as in many others, Madras was far in advance of Bengal. Still he thought that the coachmen there required looking after as well as here. Carriages might be overloaded in Madras, and he knew from experience that they were so. He thought that a general law like this should have no exceptions; and that, if it was a good law, it was good for all places.

MR. FORBES said that, as he understood it, the chief object of this Bill was to prevent cruelty to animals, and not to act as a check upon drivers. No doubt, the coachmen of private gentlemen occasionally behaved ill, but it was not on that account thought expedient to pass a law for their coercion. The whole question therefore which arose was, whether this Act was necessary or not in Madras, because, if it were not necessary, it had better not be extended to that Presidency, it being an admitted principle that all unnecessary legislation was an evil and mischievous. Now how stood the case? The Madras Government, who might be presumed to be well acquainted with the wants of their own Presidency on such a matter, had said that it was not needed at present, and had asked that it should not be extended to them, expressing at the same time a willingness to adopt the law whenever it might be needed, and suggesting with this view the introduction of a provision leaving it to their discretion to bring it into operation within their territories whenever they thought it necessary. Now he was confident that, when the Madras Government had expressed such an opinion, this Council would not show so much discourtesy to that Government as not to trust them in a matter of such minor importance as this, or force upon them a law which they had asserted to be unnecessary. The Honorable and learned Judge had alluded to the superiority of the means of travelling in Madras, and there were reasons why travelling should be better in Madras than in this Presidency. One reason was that the Carriages were better; another reason was that they never carried more than two passengers and generally only one, instead of the three and sometimes four passengers who went in a Dawk Carriage in Bengal; and were invariably drawn by two horses instead of one pony. Besides, the roofs being made circular, they could not be overloaded with luggage. The case referred to by the Honorable and learned Judge was a solitary one, and the learned gentleman would perhaps pardon him if he added that the learned Judge was himself the traveller who thus overloaded his Carriage. If that were the only instance to be urged as a ground for forcing the Act upon the Madras Presidency, he did not think that it was a reason which this Council would be willing to accept. As he had already observed, the Madras Government had not asked to be permanently excluded from the operation of the Act. What they asked was that they should be allowed to choose their own time for bringing it into operation, and that was what the amendment proposed by the Honorable Member for the North-Western Provinces would enable them to do.

MR. ERSKINE said that, partly as a matter of consistency, he must confess that he had not hitherto seen and did not now see the reason of the proposed exemption. He thought that, with respect even to a law which was intended to be made applicable to the whole of India, when a local Government wished to be exempted from its operation, their opinions were entitled to great consideration. But he was not altogether prepared to concur in the opinion of the Honorable Member for Madras, that there would be any discourtesy in this Council requiring the Act to take effect in the whole of India, unless the Madras Government showed some good reasons for the proposed exemption of that Presidency, and certainly his (Mr. Erskine's) recollection of the papers which had come from Madras inclined him to think that no such reasons had been

shown. On the whole, believing that cruelty to animals must exist, more or less, where Stage Carriages existed, he did not think that the Council would be justified, on the grounds now before them, in admitting the exemption claimed on behalf of the Madras Government.

MR. HARINGTON said that, if the Madras Government had asked that the Madras Presidency should be excluded altogether from the operation of the Bill, he should have had no hesitation in voting against such an application. But all that the Madras Government asked was to be allowed to select its own time for the Bill taking effect within the limits of that Presidency. On this side of India, there could be no doubt that the sooner the Bill was brought into operation, the better; but it did not appear to be so urgently required in Madras. He could not speak of that Presidency of his own knowledge, but he thought that the Government of Madras would not have made the request contained in the communication received from that Government without good reasons, and he was quite willing to leave the Madras Government to fix its own date for bringing the Bill into operation in that Presidency.

MR. SETON-KARR said that, agreeing with the Honorable Member for Bombay that there would be no discourtesy shown to the Madras Government if the Bill were made compulsory in that Presidency, he still thought that there was much weight in what had been adduced by the Honorable Member for Madras for allowing that Government to choose its own time. There was a too great disposition to use centralisation, and every local Government must be permitted to select its own time, and to know whether a law could best come into operation on the 1st of January of any year, or on the 1st of July. If the law worked practically and well, the Madras Government would regret much that they had not had recourse to it earlier, and would hasten to avail themselves thereof. In this view he should support the amendment of the Honorable Member for the North-Western Provinces.

MR. FORBES wished to add, with reference to what had fallen from the Honorable Member for Bombay that cause had not been shown why the Bill should not be introduced into Madras, that he did not think that that was taking a correct view of the case. That Government had said that they did not require the law at present, and the onus now lay on the opposite side to show cause why it ought to be introduced there. In his opinion, as he had already observed, laws which were not needed were only evils; and it was incumbent on those who proposed them to show why they should be passed. It was not incumbent on those who objected, to prove a negative.

SIR CHARLES JACKSON said, it had already been shown generally why such a law was necessary, and as drivers, proprietors, and their carriages and horses were considered proper subjects for control here, he thought the onus lay with the Madras Government to show why they ought not to be subjected to control in Madras. The question was whether a *primâ facie* case had been made out in favor of the introduction of the Bill into the other Presidencies, and if that was established, then the onus lay with the Madras Government to show why it was not equally applicable to that Presidency. As he understood the case, the Government of Madras did not say that the measure was objectionable, nor had they expressed any wish to be altogether excluded from the operation of the Bill. They only said they did not see any immediate necessity for the measure, and the case that had been made out for postponing the operation of the Bill in that Presidency certainly seemed to him to be a very weak one. The Government of Madras would have no good reason for considering the extension of the Act to Madras as an act of discourtesy. If the Act which was intended for all India, was allowed to apply to one Presidency, he could not see why it should not apply to another, for drivers and proprietors were much the same,

and subjected to much the same influences all over the world. He should on these grounds oppose the Clause.

SIR BARTLE FRERE said, the following was the opinion of the Madras Government, as communicated in their Chief Secretary's letter :—

"In respect to the measure generally, I am also to remark that the Government doubt, as do the Sudder Judges, whether it be required in this Presidency, and that in the event of the Bill being proceeded with, they would wish a provision introduced leaving it to the discretion of the Madras Government to bring it into operation within their Territories, whenever they may deem it necessary."

That was a distinct request, therefore, upon which the proposed Section had been framed ; and he thought himself that it was a very reasonable request, and that, when so expressed, it was hardly courteous to insist upon making the Bill immediately applicable to Madras, contrary to the wishes of the local Government.

The Section was then put and carried.

The Preamble and Title were passed as they stood ; and the Council having resumed its sitting, the Bill was reported.

CIVIL PROCEDURE.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

SUGAR DUTY (N. W. P.)

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces").

Agreed to.

The Bill passed through Committee after a verbal amendment in Section III, and, the Council having resumed its sitting, was reported.

ARTICLES OF WAR (NATIVE ARMY).

SIR BARTLE FRERE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

EXECUTION OF MOFUSSIL PROCESS (STRAITS SETTLEMENT).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

After some discussion, the Motion was by leave withdrawn, and the consideration of the Bill was postponed.

CATTLE TRESPASS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle) ;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

SIR BARTLE FRERE said, he thought, that this Bill should not be passed without great consideration, and that it was very important that the Council should have the assistance of the Honorable and learned Vice-President in considering its provisions in Committee. Besides, the subject of the Bill had some connection with a Motion which was about to be proposed to-day by the Honorable Member for Madras. He should therefore wish the consideration of the Bill to be postponed till Saturday next.

MR. HARINGTON said, he was very willing that the consideration of

the Bill should be deferred, as proposed by the Honorable Chairman, until Saturday next. The Bill was not brought in by him, but by the late Honorable Member for Bengal; and the charge of the Bill had devolved upon him simply in consequence of his being the senior Member of the Select Committee to which the Bill was referred in the regular course. Since the Select Committee made their report, a Petition had been presented against the Bill, which had been ordered to be printed on his Motion. The Petitioners seemed to think that the Bill contained provisions not to be found in the Penal Code; but a reference to the last Illustration given at the foot of Section 425 of the Code, in the Chapter relating to Mischief, would show that this was a mistake. That Illustration said—

"A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause damage to Z's crop. A has committed mischief."

From this it would be seen that the provision objected to by the Petitioners, was not a novel one or now proposed for adoption for the first time. He would not further discuss the Bill to-day, but would move that its consideration be postponed until the next meeting of the Council.

The consideration of the Bill was accordingly postponed.

FINES FOR RIOTS.

MR. FORBES moved that the Report of the Select Committee, appointed to consider the communication from the Madras Government regarding the levy, in certain cases, of a fine on the Town, District, or Division in which a riot or pillage was committed, and also to consider the existing laws generally relating to the responsibilities of landowners and occupiers of land in connection with Police matters —which was presented to the Council last Saturday, and had been printed, and was in the hands of Honorable Members—be adopted. He said that, in case any Honorable Member should not at once remember the circumstances of the case, he would briefly state that a case of riot had occurred in one of the Districts of the Madras Presidency, in reporting which the Magistrate suggested the enactment of a law for imposing a fine on the inhabitants of any village, by the inhabitants of which any serious outrage or riot might be committed, when there was reason to believe that the intention to commit such outrage or riot had been generally and publicly known to the inhabitants, and they had abstained from giving notice to the Police. That suggestion having gone home with all the papers connected with the case, the Secretary of State had desired that it should be communicated to the Government of India, by whom the papers had been presented to this Council. The subject had been considered by a Select Committee of the Council, but as no opinion upon the question had been expressed by any of the local Governments—the Madras Government even abstaining from any opinion for or against the proposed law when sending the papers home, and when sending them to the Government of India—the Select Committee had proposed that the Government of India should ascertain the sentiments of the various local Governments as to the advisability of legislation in the matter, on the receipt of which the Council would be in a better position than it was at present to come to a decision as to the necessity for the interference of the legislature. That was the Report which he now moved that the Council should adopt.

Agreed to.

MR. FORBES then moved that Sir Bartle Frere be requested to take the Report to his Excellency the Governor-General in Council, for such orders as his Lordship in Council might think it expedient to pass thereon.

Agreed to.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved that the Bill "to amend Act XXI

of 1860 (for the registration of Literary, Scientific, and Charitable Societies)" be referred to a Select Committee consisting of Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

EMIGRATION (SEYCHELLES).

MR. FORBES gave notice that he would, on Saturday next, move the first reading of a Bill relating to Emigration to the British Colonial Dependency of Seychelles.

The Council adjourned.

Saturday, July 6, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble Major-General Sir R. Napier,
H B. Harington, Esq.,
H. Forbes, Esq.,
Hon'ble Sir C. R. M. Jackson, and
W. S. Seton-Karr, Esq.

INCOME TAX.

THE CLERK reported to the Council that he had received a communication from the Bombay Government to the address of Mr. Erskine, regarding a proposed amendment in Act XXXII of 1860 (for imposing duties on profits arising from property, professions, trades, and offices).

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

RELIGIOUS ENDOWMENTS.

THE CLERK reported that he had received a communication from the Home Department forwarding a further despatch from the Secretary of State for India on the subject of the repeal of Regulations XIX. 1810. of the Bengal Code and VII. 1817 of the Madras Code, relative to native religious endowments.

SIR BARTLE FRERE moved that the communication be printed and referred to the Select Committee on the Bill to repeal those Regulations.

Agreed to.

MINORS.

THE CLERK reported that he had received a communication from the Home Department forwarding certain papers from the Government of the North-Western Provinces regarding the practical working of Act XL of 1858 (for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal).

MR. HARINGTON moved that the communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, forwarding the opinions of the local officers on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

RECOVERY OF RENTS (BENGAL)

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, forwarding, with reference to the Petition presented to the Legislative Council by certain Zemindars and others of Nuddea and to the Bill before the Council "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)", a report from the Board of Revenue on the subject.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

REGISTRATION OF ASSURANCES.

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, regarding the Bill "to provide for the Registration of Assurances."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

EXECUTION OF PROCESS (STRAITS SETTLEMENT).

MR. FORBES said, two or three weeks ago he had the honor to present to the Council a Report by the Select Committee on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)." The Bill came before a Committee of the whole Council last Saturday, and a discussion arose out of some remarks of the Honorable and learned Judge opposite (Sir Charles Jackson), which had led him to bestow a more careful examination on the papers connected with the Bill; and he thought that it would be better if the Bill were referred back to a Select Committee for further consideration. He therefore moved that the Bill be referred back to a Select Committee consisting of Mr. Harington, Sir Charles Jackson, and the Mover.

Agreed to.

EMIGRATION TO SEYCHELLES.

MR. FORBES moved the first reading of a "Bill relating to Emigration to the British Colonial Dependency of Seychelles." In doing so, he said that so many Bills for permitting emigration to the British Colonies had from time to time been brought in, that there was little to be said on introducing each new measure, and it had been of late the practice to preface a motion for their being read a first time with hardly any remark at all. This practice he (Mr. Forbes) proposed to follow on this occasion and he would only remind the Council that the Seychelles dependency consisted of about thirty islands, lying north of the Mauritius and distant about 800 miles. They were first occupied by the English on the capture of Mauritius in 1810 and were formally ceded to England by the treaty of Paris in 1815. They were dependencies of the Mauritius and were subject to the Government of that Colony. They had excellent harbours and enjoyed an entire immunity from the hurricanes which caused such damage to property and shipping at the Mauritius. It was only about fifteen of the islands that were of any importance and were cultivated, and of these Mahé was the largest and contained about 30,000 acres, the others averaged from 120 to 8000 acres. The soil in the vallies was very rich and produced all tropical produce, and it was for the purpose of cultivating these vallies that application was now made by the Mauritius Government for leave to promote emigration from India. The Secretary of State had signified his approval of the measure, and it was at the request of the Government of India that the present Bill was brought in. The Bill extended to the Seychelles dependencies Act XV of 1842 which was the law under which emigration to the Mauritius was now carried on, and included the provisions of the Acts passed for Calcutta, Madras, and Bombay regarding the countersignature of the Protector of Emigrants to the emigration certificate of each emigrant. A Section had been added to provide for emigrants to the Seychelles being taken to the quarantine station of Mauritius in case of sickness breaking out on board the vessel on which they might be, and in that case an option was to be given to them to remain at Mauritius or to proceed to Seychelles as they might please.

The Bill was read a first time.

SETTLEMENT OF ENAMS.

The Orders of the Day being read for the second reading of the Bill "to

facilitate the adjustment of unsettled claims to exemption from the payment of the Government Land Revenue in the Presidency of Bombay, exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such Revenue"—

SIR BARTLE FRERE said, it had been his intention, on behalf of the Honorable Member for Bombay, who was unfortunately prevented by illness from being present to-day, to have moved the second reading of this Bill. His Honorable friend would not have deputed this duty to any else, had he not been aware of the great anxiety of the Bombay Government for the passing of this Bill as speedily as possible; but as he understood some Honorable Members might prefer that the second reading should not be proceeded with to-day in order that they might become better acquainted with the subject and be better able to discuss the principle of the measure, he would leave it to the Council to decide whether to proceed with the second reading of the Bill to-day, or leave it to the Honorable Member to do so next Saturday.

THE VICE-PRESIDENT said, the second reading of this Bill stood over on a former occasion at his request, because he had not been able to devote sufficient time to its consideration. Last Saturday the consideration of the Bill was again postponed, not at his request, for he had been prevented from attending the Meeting of the Council on that day, but, as he had been given to understand, for his convenience. He was now fully prepared to enter upon the consideration of this Bill unless any Honorable Member desired it to stand over.

SIR BARTLE FRERE said, as no such desire had been expressed by any Honorable Member, he begged to move the second reading of the Bill.

MR. SETON-KARR: Sir, with reference to the postponement of this Bill, and on consideration of the interesting and important papers connected with it, I do not wish to give a silent vote on the second reading. No one can rise from a perusal of these papers without feeling convinced, that the main object now should be to strengthen the hands of the Bombay Government, and to put an end to harassing and vexatious enquiries into titles.

The proceedings of the Enam Commission have now been going on for seventeen years, and during the last ten years they have been in full and active operation. The cost has been two and a quarter (2¼) lakhs of Rupees a year. It is too late to enquire whether the proposed Bill will be regarded by the natives as an act of political expediency, or as one of pure justice: or what effect it will have on those whose claims have already been adjudicated, and who, therefore, cannot come forward to claim the benefits of a summary settlement. The time for that is past. The thing now to be done is to bring matters to a conclusion. In this view, the main principles of the Bill seem to me unobjectionable. It is proposed to give holders of Enam lands the option of a summary settlement, to confirm the tenure, to fix a quit rent and a Nuzzerana in perpetuity, and to recognise the power of holders to adopt sons and to transfer or devise such lands, as well as to uphold succession to collaterals.

I see no harm in casting the burden of proof on the person claiming a formal adjudication, neither is there anything to object to in the cases proposed for exception in the Bill; namely, those of lands held under treaty, of Surinjams or minor political tenures, of lands held on service tenure, and of lands already adjudicated as not heritable.

But there are other points of principle as well as of detail, which require serious consideration, or even amendment. Sir, premising that I hope the Revenue Survey alluded to in Rule I, Section II, will progress with speed and certainty, I think the provision of Section III open to objection, regarding the rightful owner of the land; and the nature of the possession, when a title shall be established under Section VI, is somewhat without value. In such cases there is no power to adopt

or to transfer or to devise the lands; and in case of transfer to persons, not heirs by actual descent, the land becomes liable to the full assessment. Now, our object should be to make lands as unfettered and as valuable for sale or transfer as possible, and this object is certainly defeated by this Section.

Next, the proviso for demanding a deposit of one-fourth of the annual assessment, and security for payment of the remainder, under Section VII, seem somewhat harsh and unnecessary. Government is as able to compel compliance with this demand, after adjudication on the point of title, as before, and the proviso will be needlessly harassing to the holders of lands.

Section XIII also requires some further provision for the regular and speedy enquiry into all these claims. It is true that this Section empowers the Collector to serve notices on Enam holders as to whether they claim enquiry, and to demand returns to be furnished within two months. But Collectors may be dilatory or over-worked, or may be shifted unavoidably, and the issue of notices and the registry of claims would fall into arrears. What is wanted is, that holders of lands may have the option of coming forward themselves and registering their claims, either to formal adjudication or summary enquiry; and I should like to see a limit of three years fixed for this object, as suggested in some of the papers.

The Section regarding the precise tribunal for appeals is also open to question.

Sir, these are the main points in the Bill which demand strict scrutiny, and there is one other point on which I should be glad of some explanation; namely, as to the precise meaning of the words "public officers authorised by the British Government to have charge or custody of books and records" in Clause 13 of Section XIII. Are these persons analogous to the *putwarees* and *kanoongoes* on this side of India, or is the term to be restricted to Collectors and other European officers? I shall be glad if the term can be more accurately defined.

But, with these exceptions, I think the Bill entitled to the support of the Council.

There never was a case in which the legal maxim could be of greater truth or more instant application, *Interest reipublicæ ut sit finis litium.* I can only judge here from my experience of native feeling in Bengal. With what avidity and alacrity would such a summary settlement as is now proposed, have been accepted by the natives of Bengal some twenty years ago! It was entirely owing to the want of such a provision that we, in Bengal, had incurred considerable expenditure, introduced complications into claims for real property, engendered irritation, and confirmed discontent. No native connected with landed interest feels any grievance comparable to the grievance consequent on the resumption laws.

Looking, therefore, to the statements made in the elaborate papers appended to the Bill; to the wise and judicious remarks of the Honorable the Governor of Bombay and his colleagues; to those of the Members of the Supreme Government and of the Secretary of State; and to the paramount object which this Council should have at heart; I shall, subject to a fair revision in Committee, support the main principles, and vote for the second reading of this enactment, as one well calculated to guard the rights and interests of an important section of the native community as well as to provide for the just and lawful dues of the State.

THE VICE-PRESIDENT said, it was not his intention to offer any opposition to the second reading of this Bill. He thought the general principles of it were fair and just, and he quite agreed with the Honorable Member who had last spoken that it was most desirable to get rid as soon as possible of these harassing and vexatious enquiries. But there were one or two points in respect to which, by voting for the second reading, he did not wish to be bound when the Bill came to be considered in Committee.

With regard to the second Clause of the first Section, the following were

some of the cases which would be excepted from the operation of the Bill :—

"Lands granted or held as jagheers or surinjams or on similar political tenures, which shall be held for such time and in such manner *as may be in accordance with the existing rules laid down by Government for the regulation of such holdings.*"

It was to the words printed in italics that he took exception. He was not quite certain whether the meaning of this provision was that lands of this description should be held subject to such rules as the local Government should make respecting them, or that those lands had been granted on the condition that they should be so subject. If it was merely a description of the lands, then he had no objection to the provision, though in that case some words were necessary to make the meaning quite clear. But if it meant that lands already granted or held as jagheers or surinjams or the like should be held subject to such rules as the local Government might now or at any future time appoint, he thought, that that would be unjust, particularly if the lands should have been held for some time. He should therefore object to that Clause and would propose its omission. But that was a matter which would be considered by the Select Committee, and every Honorable Member would have liberty to discuss it when the Bill should come before a Committee of the whole Council.

The next point to which he would direct the attention of the Council was the 3rd Section of the Bill, to which the Honorable Member for Bengal had already alluded. He (Sir Barnes Peacock) must observe that he did not read this Section in the way that the Honorable Member had read it. He (Sir Barnes Peacock) read it the other way; and as he understood it, it provided that an adjustment made with the holder should be binding on the rightful owner, but that it should not bar him, his heirs and assigns, from any rights or remedies either at law or in equity to which he or they would be entitled against the holder, his heirs and assigns. [Mr. Seton-Karr—Yes, it was a mistake.] Now he would take the case of a mortgagee in possession. In a subsequent part of the Bill he found that a mortgagee in possession was considered a holder. If so, he did not see the justice of making an adjustment entered into by such a mortgagee binding on the mortgager, or making the latter a party to any separate arrangement entered into by the former. He thought that some Clause might be introduced, providing that notice should be served on the owner whenever practicable, and that if the owner was not known, then probably a notice served on the holder should be sufficient, and the holder deemed to be owner for all the purposes of this Act.

Then Section IV provided as follows :—

"Lands held partially or wholly exempt from the payment of land revenue, and already formally adjudicated to be so continuable hereditarily in perpetuity, are to be henceforth recognized, so far as the rights of Government are concerned, as the heritable and also the transferable property, not only of the actual descendants of the person to whose descendants inheritance may have been limited by the terms of the said adjudication, but also of all his legal successors by inheritance, including heirs by collateral succession and heirs by adoption, and their assigns; and the right of Government or its officers to question the title to possession, or to exemption from the payment of land revenue, of any holder of the said land already so adjudicated to be heritable in perpetuity, on the ground that he does not belong to the family to which title is restricted by the adjudication, is hereby given up, and, in consideration of these concessions, all lands already so adjudicated to be heritable as aforesaid, are henceforth to be held subject to the payment to Government of an annual succession and transfer Nuzzerana, calculated at the rate of one anna for each Rupee of the assessment of the land, ascertainable as provided in the Rules of Section II of this Act, which Nuzzerana is to be in addition to the partial assessment, if any, ordered by the terms of the formal adjudication under which the land has already been declared to be continuable."

Now this Act was intended for the purpose of compromising various claims. But the above Section gave the Government the power of saying, "We will give you rights beyond what you have, and, in consideration of these rights, we propose to levy from you an

assessment to which, according to the adjudication, we have no right." Now he thought that that would not be a compromise. But supposing the holder of the land which had been adjudicated upon were to say, "I am quite content with the terms of the adjudication, and I do not wish my lands to be made heritable by and transferable to others than those to whom succession has been restricted under the adjudication." He (Sir Barnes Peacock) thought that an option should be given to the holder whether to accept or not the enlarged right of succession and transfer, for which he would have to pay. That also was a matter upon which no Honorable Member ought to be bound by voting in favor of the second reading of the Bill.

Then with regard to Section VII, the Honorable Member for Bengal rather objected to requiring a party to make a deposit of one-fourth of the annual assessment, and give security for the payment of the remainder. Clause I provided as follows :—

"When the holders of lands held wholly or partially exempt from the payment of land revenue, demand a trial and adjudication of their title under the provisions of Section VI of this Act, they shall be required to deposit forthwith a sum equal to one-fourth part of the annual assessment of the land ascertainable according to Rules 1 and 2 of Section II of this Act, and thereafter to continue to pay a fourth of the said assessment, as it would become due from the date of such demand for trial, until the date of such adjudication, if the land were fully assessed to the land revenue, and to furnish satisfactory security for the payment of the remaining three-fourths thereof. In case of their failure to prove the title to exemption asserted by them, and in default of their making such deposits, and furnishing such satisfactory security, the full assessment of the land, which is to be the subject of inquiry, shall be levied, pending the adjudication."

As he understood that Clause, persons claiming exemption were required to pay down forthwith one-fourth of the assessment ascertainable under certain rules, and to continue to pay this one-fourth annually till the case was adjudicated upon, and to give security for the payment of the remaining three-fourths. Now he saw no hardship in this. *Primâ facie* all lands were liable to assessment, and the principle of this Bill was that the *onus probandi* should lie on the party who claimed exemption. He thought it very fair on the part of the Government to give the holder the opportunity of holding his lands in perpetuity. If the party was unwilling to pay the one-fourth, the Government had a full right to assess the land with the full assessment; and if the claim should be adjudicated in favor of the claimant, Government would be bound by Clause II to return the whole amount of the deposit with five per cent. interest from the date of the deposit to the date of repayment. The Government had no wish to levy the full assessment at once. They said, on the contrary, "Go on paying one-fourth till the case is decided, and give security for the remaining three-fourths; and if the adjudication be ultimately in your favor, we will return the money with five per cent. interest. If you fail to make the deposits and furnish satisfactory security, then we shall at once assess you in the full amount." He saw nothing unreasonable in this. The principle to which the Honorable Member for Bengal did not object, was to throw the burden of proof on the holder; and he (Sir Barnes Peacock) thought it a very reasonable demand to require the party to make a deposit of only one-fourth and to give security for the remaining three-fourths, the Government being bound, in the event of the adjudication being adverse to them, to refund the deposit with five per cent. interest.

The only other Clause upon which he wished to remark was Clause I of Section XIII to which the Honorable Member for Bengal had also alluded. That Clause empowered Collectors to serve holders of land claiming exemption not yet adjudicated upon, with notice requiring them to state whether they demanded an enquiry instead of accepting the compromise. He saw no objection to adopting the suggestion of the Honorable Member, but that was a matter which could be very well considered by the Select Committee.

The object of the Clause, as he understood it, was simply that parties claiming exemption might know that their lands came under this Act. But if holders of land wished to come forward themselves and to bring their cases within the Act, he saw no objection to give them the option.

On the whole, he should vote in support of the second reading of the Bill, leaving it to the Committee of the whole Council to object to any of its details after the Bill had been considered by a Select Committee.

SIR BARTLE FRERE said, as the Council did not object to the principle of the Bill, he should have very little to say with regard to the matters of detail which had been commented on by the Honorable Members who had spoken on the subject. He would briefly state the answer which he thought would have been given by his Honorable friend to the objections which had been taken to some of the details of the Bill.

With regard to the objection to the second Clause of Section I, he might mention that this Clause related chiefly to lands which had been granted by former Governments at various times for military or civil services rendered to the Government. A very large portion of the possessions now held by Scindia and Holkar were originally granted on this tenure, and so were the possessions of the Chiefs known as the Chiefs of the Southern Mahratta country. They were more of political than financial importance, and, as remarked by the Honorable and learned Vice-President, had a great variety of prescriptive rights. Some of them held by grants of the late Peishwa; while others were of longer tenure, having been held from generation to generation, which gave them a strength of title very different from a grant by Bajee Rao, the last of the Peishwas. This Clause, he understood, was intended to reserve to the Government the power to deal with these grants rather on political considerations than by the direct process of law.

With regard to the objection to Section III, he thought the explanation which had been given by the Honorable and learned Vice-President was the correct one, and he (Sir Bartle Frere) had only further to observe, in regard to the apparent anomaly in the mode of treating mortgagers, that, in a great part of the Deccan and Guzerat, there was so great a dislike on the part of a land-owner to part with the smallest particle of land, that generally the only means by which he would consent to give up his land was by giving a mortgage, which often ran through so many generations that it was equivalent to a transfer of the right of ownership. The natural result was that the land would be entered as mortgaged, and you would be obliged to deal with the mortgagee as you would with the owner. That was the reason why, in this and other Bombay Acts, mortgagees were treated in a manner which might appear strange to those who had to deal with mortgagees as they were found in other parts of India.

As regards the 4th Section, he was, as far as his own opinion went, prepared to concur with the Honorable and learned Vice-President and give an option. The Bill in this respect was drawn as it was strongly recommended by the Bombay Government, but this was one of the points which struck him as open to objection. Reference had been made to Bombay on the subject, and should the Bombay Government not lay great stress on its first recommendation, he should certainly feel disposed to vote with the Honorable and learned Vice-President on that point. It was not, however, such a severe provision as might appear. It was one of the anomalies and hardships connected with former proceedings under the original Act, that the only succession recognized was that formally approved by the ruling power. It so happened that there was a vast number of successions to which recognition was required by usage and which had been virtually and tacitly recognized either by the native Government or by ourselves in the early part of our rule in the country, but not in the formal and authoritative

manner which was required by our later Regulations. We had, however, recognized no other successions, and in so doing it was very generally held that we had overstrained the rights of Government, and he believed this provision would be accepted as a very great boon by those whose cases would be adjudicated. But if it was wished, he concurred with the Honorable and learned Vice-President that an option should be given.

He was not sure if he perfectly understood the objection taken by the Honorable Member for Bengal to the second Clause of Section VI, in which, as he understood him, he seemed to imply that the title granted after enquiry would not be as perfect as might be reasonably expected when compared with the other titles to be given under this Act. But he (Sir Bartle Frere) believed this Clause would secure to the grantees all that they could now possess by the existing law and usage, and they would be left in the same position as under the Act which it was proposed to alter. He thought it was not unreasonable that a man, after having claimed enquiry and objected to a compromise, should not be in a better or even in as good a position as if he had accepted the compromise.

With regard to the 7th Section also, he concurred in much of what had fallen from the Honorable and learned Vice-President, and he thought that what he said would meet the objection taken by the Honorable Member for Bengal. One great object of this Clause was, he believed, to take away all possible ground for delay on the part of the rent-free landholder.

There was then the 13th Section, which required the Collector, whenever he had reason to believe that lands were held exempt from payment of land revenue, and that there had not been any formal adjudication upon the title to such exemption, to serve a notice upon the holder, requiring him to state whether or not he demanded an enquiry. On that point also, he believed the explanation given by the Honorable and learned Vice-President was the correct one. It was one of the evils of the Act which we were amending, that cases came up, not in order according to the districts to which they belonged, but as the question regarding that particular grant happened to be started. This Clause provided that the Collector should systematically send a notice to all parties within his jurisdiction whose property would be subjected to enquiry, and that the enquiry should proceed systematically and regularly through the whole country. In the 13th Clause of the 13th Section, there was a provision requiring books or accounts of revenue to be produced from proper custody. He might explain that, when we took possession of the country a great portion of the Government accounts were in the private custody of the Government officers. The duties of Government had in a great measure been carried on by hereditary officers who had in their hands a great portion of the State accounts, besides a large Record-Office at Poonah, in which the greater part of the accounts in the Peishwa's possession was deposited. He did not know if it had been possible, when we first took possession of the country, to secure all those records; but certainly no adequate steps were taken for the purpose, and officers enquiring into Enams had constantly been met with documents produced from private records, bearing seals of the earlier Peishwas, which there could be no doubt were forgeries. These forgeries it appeared had been carried on to a very great extent; and soon after these enquiries were commenced, he thought about 1840, it was found necessary to establish a separate agency for collecting, compiling, and marking those records of the former Government which were of a character to be relied on in these enquiries. This Clause restricted the evidence of such documents to those produced from the regular Record-Office which was placed under Officers of responsibility.

The Honorable Member for Bengal also referred to the provision regarding the revenue survey, and enquired whether there was any prospect of its speedy settlement. He (Sir Bartle

Sir Bartle Frere

Frere) might mention that the survey had been almost completed in the Deccan, and in the Southern Mahratta country. It was in progress in the Concan, and it had been more or less carried out in other parts of the Bombay Presidency.

He would not at all object to the reservation with which Honorable Members voted for the second reading of this Bill. There were provisions in it to which he himself entertained objections. But he knew that the matter had been considered by that large-hearted and liberal-minded statesman now presiding over the Government of Bombay, and the present Bill had been brought in with the single-minded intention of doing at least as much for the protection of private rights as for increasing the Government revenue. It was Sir George Clerk's intention to introduce a measure which would put an end to the discussion and irritation which had been going on for several years past and which had had an injurious effect on his Presidency. It was the nature of all compromises to be imperfect. He had no doubt, however, that on many of the points which had attracted the notice of Honorable Members, the Government of Bombay would have gone further had it not been fettered by several years of administration of a different system. He trusted that he had not damaged the Bill by offering these observations in the absence of his Honorable friend the Member for Bombay. But his Honorable friend was himself so anxious that it should be brought as early as possible before the Council, that, unless a strong desire had been expressed by the Council, he would not have wished the second reading to be postponed.

The Motion was then put and carried, and the Bill read a second time.

GOVERNMENT SEAL.

SIR BARTLE FRERE (in the absence of Mr. Erskine) moved the second reading of the Bill "to amend the law relating to the use of a Government Seal."

The Motion was carried, and the Bill read a second time.

STAGE CARRIAGES.

MR. HARINGTON moved that the Bill "for licensing and regulating Stage Carriages" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SUGAR DUTY, (N. W. P.)

MR. HARINGTON moved that the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Verbal alterations were made in Section 269.

An amendment was made in Section 273 (on the Motion of Mr. Harington) dispensing with the concurrence of the Judge in a verdict of guilty by a specified majority of the Jury.

Sections 274 to 276 were transposed so as to stand before Section 280, after verbal amendments in Section 274, and after the omission of the following Clause in Section 275, on the Motion of Mr. Harington :—

"Persons who are unable to understand the language in which the trial is conducted."

MR. HARINGTON then moved the introduction of the following new Section after Section 289 :—

"The Judge shall not allow any person to serve on the Jury unless such person understands the language in which the evidence is given or interpreted."

Agreed to.

Verbal amendments were made in Section 292.

The postponed Section 294 was passed after a verbal amendment; and the two following new Sections were introduced after Section 294, on the Motion of Sir Charles Jackson :—

"In any trial by jury, if the accused is found guilty by a majority consisting of a less number of the Jury than is specified in that behalf in Section 273, or if the accused be found not guilty by a majority consisting of a less number of the Jury than is therein in that behalf specified, the Jury shall be discharged; and in any such case as aforesaid there shall be a new trial before a Jury consisting entirely of other Jurors, and the accused may be remanded or held to bail for such new trial. If on any new trial by Jury the accused shall not be found guilty by a majority consisting of such a number as aforesaid, he shall be acquitted.

At the close of the trial and after the Judge has summed up the evidence as hereinafter provided by Section 313, the Jury may retire to consider their finding, and it shall be the duty of an officer of the Court not to suffer any person to speak to or hold any communication with any Member of such Jury. In any case in which a Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous; and if the foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If, after such a period as the Judge shall consider reasonable, the foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict."

MR. FORBES said that, in rising to move the introduction of the additional Chapter of which he had given notice, he must first explain to the Committee the circumstances under which it was that the first Section of the Chapter was identically the same as the one which the Committee rejected only two or three weeks ago. However much he might himself regret that the strongly expressed wish of the Government of Madras upon a question which concerned its own Presidency only and was a matter of entire indifference to the rest of India, inasmuch as the Courts to which the point in question referred had no existence but in Madras, had not been assented to by the Council, he still should not be so wanting in respect to the Council as to waste their time in re-discussing a point which they had only two or three weeks ago decided by a large majority, and his reason for again bringing forward the first of the three Sections of which he had given notice was that, although it was the Section on which the Committee had formerly divided, it was not the one which contained the principle on which the division had been come to. Honorable Members would perhaps remember that the principle on which they divided was whether the Subordinate Criminal Courts in Madras should follow the procedure laid down for the Courts of Session as the Madras Government wished and as had always hitherto been the practice, or that laid down for the Magistrates as was now for the first time proposed; and if they would look at the first of the three Sections which he now proposed to move, they would find that it had no reference to procedure whatever. The division on the last occasion was in fact rather premature and would have been more regular if it had been taken on the third instead of the first of the three Sections of which the proposed Chapter consisted.

He would now briefly explain that the first Section provided only that the Subordinate Criminal Courts should continue to exercise their present jurisdiction, and made no change whatever in the present law; the second Section provided for the committal of cases to these Courts by the Subordinate Magistracy precisely as at present, and the third Section prescribed the procedure to be followed by these Courts in the trial and disposal of cases. In the last Section the Committee would find that he had adopted the principle of the resolution to which they had come on the last occasion of this question being before them, and had substituted the procedure of the Magistrate for that of the Sessions Court, and had, he hoped, thereby removed all the objections which had been urged against the present proposition.

The Chapter was as follows :—

"1. The Subordinate Judges and Principal Sudder Ameens in the Presidency of Fort Saint

George shall continue to exercise under this Act, subject to the provisions of Act XLV of 1860 (The Indian Penal Code), the Criminal Jurisdiction which they are competent to exercise under any law for the time being in force, and shall have the same powers of punishment as are given by this Act to an Officer exercising the powers of a Magistrate.

2. Subordinate Magistrates of the first and second class in the Presidency of Fort St. George shall commit to the Court of Session any persons charged with offences triable exclusively by that Court, or shall, under such orders as the Sudder Court shall from time to time issue, either commit to the Subordinate Judges or Principal Sudder Ameens the cases of persons accused of offences triable by such Subordinate Judges or Principal Sudder Ameens or refer such cases for the orders of the Magistrate of the District or other Officer exercising the powers of a Magistrate. If the case be referred to the Magistrate of the District or other Officer as aforesaid, such Magistrate or other Officer shall examine the parties as if no proceedings had been held in any other Court, and may, if it appear necessary, recall and examine any witness who shall already have given evidence, or may call for or may take any further evidence. It shall be competent to such Magistrate or other Officer to pass such order, or to proceed in the case, as he might have done had the case been tried by himself in the first instance.

3. In cases committed for trial before the Subordinate Judges or Principal Sudder Ameens, they shall be guided by the Rules contained in this Act for the trial of cases before the Magistrate which are hereby made applicable to such cases. The Subordinate Judges and Principal Sudder Ameens may commit any case to the Court of Session in which the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Subordinate Judges or Principal Sudder Ameens are authorized to adjudge."

After some discussion, the Chapter was passed with the substitution of the words "proceed as prescribed in Sections 239 and 240 of this Code" for the words "examine the parties as if no proceedings had been held in any other Court, and may, if it appear necessary, recall and examine any witness who shall already have given evidence, or may call for or may take any further evidence" in Section 2, and subject to further consideration on the amendment of those Sections.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

STAGE CARRIAGES, AND SUGAR DUTY (N. W. P.)

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "for licensing and regulating Stage Carriages," and the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)," to the Governor-General for his assent.

Agreed to.

SETTLEMENT OF ENAMS (BOMBAY.)

SIR BARTLE FRERE moved that the Bill "to facilitate the adjustment of unsettled claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such Revenue" be referred to a Select Committee, consisting of Mr. Forbes, Sir Charles Jackson, Mr. Seton-Karr, and Mr. Erskine.

Agreed to.

GOVERNMENT SEAL.

SIR BARTLE FRERE moved that the Bill "to amend the law relating to the use of a Government Seal" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Seton-Karr, and Mr. Erskine.

Agreed to.

NOTICES OF MOTION.

SIR BARTLE FRERE gave notice that he would, on Saturday next, pro-

ceed with the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a License," and the Bill "to provide for a Government Paper Currency," and also that he would, on the same day, move the first reading of a Bill to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices).

MR. HARINGTON said, with reference to that part of the notice of the Honorable Member of Government which related to the Currency Bill, he hoped that, in the event of the Government having it in contemplation to propose any alterations in the Bill as settled in Committee of the whole Council, the proposed amendments would be printed and circulated to Honorable Members in sufficient time before Saturday next to admit of their being fully considered.

SIR BARTLE FRERE said that the suggestion of the Honorable Member would be adopted.

The Council adjourned.

Saturday, July 13, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere.	C. J. Erskine, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.

STAGE CARRIAGES; AND SUGAR DUTY (N. W. P.)

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "for licensing and regulating Stage Carriages" and the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

CUSTOMS (STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received by transfer from the Home Department a communication from the Governor of the Straits Settlement, regarding the frequent departure of vessels from Ports in that Settlement without Port clearances, and forwarding a draft Act to be substituted for Regulation III. 1833, with a view to prevent the evil.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

COURTS OF REQUESTS (STRAITS SETTLEMENT).

THE CLERK reported that he had received by transfer from the Home Department a communication from the Straits Government, regarding the extension of the powers of the Courts of Requests in that Settlement.

MR. FORBES moved that the communication be printed and referred to the Select Committee on the Bill on the subject.

Agreed to.

RECOVERY OF RENT (BENGAL).

THE CLERK reported a further communication from the Government of Bengal to the address of Mr. Seton-Karr, forwarding a copy of a correspondence relative to the difficulty experienced by Zemindars, under Act X of 1859, in the measurement of lands.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill to amend that Act.

Agreed to.

SALTPETRE.

THE CLERK reported a further communication from the Government of Bengal to the address of Mr. Seton-Karr, regarding the proposed taxation of salt obtained in refining saltpetre.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill to which it related.

Agreed to.

INCOME TAX.

The Order of the Day being read for the first reading of a Bill to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices—

SIR BARTLE FRERE said,—Before referring more particularly to the subject of the Bill which I propose to ask the Council to read a first time to-day, it will be well that I should advert very briefly to those changes which have taken place in the financial position of Government since our Honorable colleague, whose absence from among us we all very deeply regret, made his financial statement on the 27th April last.

The most prominent cause of difference is one which the Council will have anticipated from the great fall in the price of Opium. The revenue from this source was estimated at £6,107,561, and this, at the time the estimate was made, was a perfectly safe calculation, for it took the selling price of Opium at the average rate of the year previous, namely, 1,748 Rupees per chest, whereas the then selling price was over 2,000 Rupees per chest; and had my Honorable colleague taken the prices which then ruled and had been ruling for some time previously, he might with perfect fairness have added a million and a half to his estimate. Indeed the sale which next followed in May, indicated a still higher range of prices than had been attained for years past, and there were not wanting those who considered that he should have taken a higher estimate of the Opium revenue for the year. But cautious as was the estimate, it was lower than was justified by the result, and that within a much shorter period than he could possibly have anticipated. The great rise of prices in May was followed by a still greater fall in June, and at the last sale the price realized was little over 1,400 Rupees a chest; and whether we look at the state of the market here or in China, there appears little ground for confidence that prices will rule much higher for some time to come. At any rate, according to the best opinions we can obtain, 1,400 Rupees would be as high an estimate for the price of the year as it would be safe to take.

This would leave, after allowing for the unexpectedly high prices in May, a loss in Bengal of £685,000 on the quantity of Opium expected during the twelve months. It does not follow that the loss will be so great in Bombay, where the revenue from Opium depends, not as in Bengal on the price paid to Government for the Opium of which Government are the sole manufacturers, but on the number of passes taken out at a fixed rate of charge, which is now 700 Rupees per chest, the supply being entirely in the hands of private manufacturers and Government exercising no control whatever beyond the levy of the pass or export duty. But the same causes which affect prices here must affect them at Bombay, and may cause a falling off in the quantity sent to China, and if the revenue suffered to a similar extent in Bombay, Government might lose about £265,000. There are many reasons to justify a hope that the loss may not be so great: low prices in China may stimulate consumption, and there may be some compensation for lower prices in increased sales, but it must be borne in mind that the quantity of Opium in the market does not admit of sudden increase, and it is only prudent to be prepared for a loss under this head, including both Bengal and Bombay, of about £950,000.

But this is not all. Owing to the great rise in wages and in prices of produce of all kinds, it has been found necessary to raise the amount of advances to the cultivators of Opium, from 4 to 5 Rupees per seer in Bengal, which will add to the cost during this year of providing the Opium for next season, a sum of not less than £250,000. This necessity was foreseen by Mr. Wilson, and a considerable advance was made last year. But the Lieutenant-Governor found it was not sufficient to prevent a falling off in the cultivation, and a further advance to the extent stated has been found unavoid-

able. The necessity for this was not known to Mr. Laing at the time he made his estimate.

We must then be prepared for an Income less than we had in April every reason to expect from Opium, by a sum little short of £1,200,000; and, instead of £6,100,000, at which Mr. Laing took the net Opium revenue, it will stand at little more than £4,900,000.

We may hope that this is an extreme estimate of our probable loss, but it is one for which precisely the same reason exists at this moment as for the more favorable view taken by Mr. Laing less than three months ago, and the fact deserves the gravest attention of the Council. First, because it proves that we cannot, for some time to come, relax our exertions for the extinction of the deficit, and, 2ndly, because it shows how just are the apprehensions which have been entertained that the Opium revenue is not a source of Income on which the Government of India can safely rely to the same extent as in former years; and that the time has come when, without reference to the financial exigencies of the hour, it behoves the Government of India to provide for a more secure Income than that for which it is now so largely dependent on the price of Opium.

There is another considerable item of charge which does not appear under any separate heading in the Estimate for '61-62. I mean the loss by exchange on Railway Capital, regarding which Mr. Laing observed as follows:—

"But I shall save the £473,334 set down last year for loss by exchange on Railway Capital, for, as nearly as I can estimate, the interest due by Railway Companies on advances made by Government, will balance any loss by exchange from further payments under existing contracts, and I take it for granted that the Home Government, on whose attention it has been urged, will not think of extending a single contract with this most objectionable clause."

(Vide p. 10 of the printed report of his speech.)

His intention was that, in all those cases in which Government came forward to furnish funds to those Railways which were unable to provide funds for themselves, the Government would enter into new arrangements which should save them for the future from the loss which has been heretofore incurred by the difference between the market range of exchange, and the rate at which the exchange is calculated in the contracts with the guaranteed Railway Companies. The Council is aware that the contract rate of exchange is 1*s.* 10*d.* the Rupee, while the market rate has been for some time considerably higher, and a corresponding loss has accrued to Government in accounting with the Railway Companies at the lower rate. Thus, when the market rate was 2*s.* the Rupee, every Rupee which the Government advanced on account of Railways in India, was worth at the market rate 2*s.*, but it was only accounted for between the Government and the Railway Company at 1*s.* 10*d.* which of course entailed a loss of 2*d.* in the Rupee on Government, and the loss under this head in 1860-61 was estimated at £473,000. It was proposed that, in any fresh arrangements with the Railway Companies, steps should be taken to guard against this loss in future, and by this means, coupled with some fresh arrangements regarding interest on sums overdrawn, Mr. Laing calculated on saving the whole of this item of loss on Railway exchange. After mature consideration, however, the Secretary of State did not think it desirable to propose any alteration in the terms of the existing contracts with the old guaranteed Railway Companies, and it would therefore have been necessary to have added a sum of £495,000 to the estimate of expenditure for the current year. But this will not affect the total of the estimate, for each Government had charged itself with the loss by exchange on Railway capital, and the whole sum was included in the £3,096,916 there set down for "Civil and Political charges, including contingencies," and, in consequence, the total of expenditure as shown at the foot of the statement, which is appended to the printed

Sir Bartle Frere

report of Mr. Laing's speech, needs no correction.

There are some further items of expenditure which have been omitted from the estimate, of which the principal are £183,000 on account of postage charges, which should have been entered by various departments in their separate estimates, but which were omitted, and other smaller items aggregating £165,000, making a total of £348,000, which must be added to the sum above shown as deduction from our expected Opium revenue, so that we must be prepared either to save expenditure or to provide increased revenue to the extent of fully a million and a half sterling, in order to ensure the result of a balanced budget next year, as hoped for by Mr. Laing.

The Government of India desired to take the earliest opportunity of stating this result, as soon as it became aware of the facts; and in stating them fully as I have done, I am only performing a duty which would have been discharged and doubtless far better than I have done, had Mr. Laing been here to speak for himself.

After having thus stated the unfavorable side of the picture, it is satisfactory to be able to assure the Council that this heavy addition to our liabilities will in no way materially affect the present financial position of Government, nor, I trust, falsify the hopes which were held out by Mr. Laing, that he would not require to raise money in India during the current year.

The cash balances which Mr. Laing estimated at £12,850,000 for the end of the year just closed, were in many cases estimated on a calculation of expenditure which had been so effectually reduced, that the cash balance in hand at the end of the official year actually amounted to £14,286,000, without including bullion remittances lately received from England. It was thus £1,416,000 more than the sum Mr. Laing had estimated, and had considered as a more than ample working balance. This it will be remembered is an actual result, while the £1,200,000 of loss on Opium revenue is, we may trust, an outside estimate of a probable loss.

For the future I trust there will be no cause whatever for despondency. The facts I have just stated will show that our task is not so nearly accomplished as we had reason to hope, that for several months longer we must persevere in the course that has hitherto been so successful, that we cannot afford to relinquish any item of taxation which Government has hitherto declared its intention to impose, and that we cannot yet relax the pressure which has been put upon all departments to enforce the most rigid economy. But I trust that, by devoting its attention to the development of the sources of revenue already existing, the Government of India may be able to dispense with new taxes other than the License Tax which has been so long under discussion, and any local taxes which the Local Government may desire to introduce for purely local purposes; and as regards further reductions, we have every reason to hope that by a perseverance in a course of rigid economy very considerable further saving may be effected in all departments, without danger to the security of the country or injury to the efficiency of any branch of the administration. Above all, it is the Governor-General's earnest hope that we may not be obliged to curtail any of the increased assignments to Public Works granted on the strength of the favorable view taken of our financial condition in April last, and if seconded, as I feel assured we shall be, by the local Governments, I see no reason whatever to doubt that the expectations which have been held out will be fully redeemed. We cannot conceal from ourselves that the task is somewhat more difficult than we had supposed three months ago, but of final success we feel confident.

I have made no allusion to any increase of charge on account of the four millions which the Secretary of State has lately taken power to borrow in England on Railway account, because in point of fact there will be little or no charge to the State on that account.

The Railway Companies who will require it, will pay interest on it to Government, so that the State will not have to bear the burden.

I come now to speak of the Bill which I asked the leave of the Council to introduce this day for the amendment of the Income Tax Act. The course which Mr. Laing proposed, was stated by him in his speech in this Council on the 27th of April last, and will be found detailed at pages 13 and 14 of the printed report of his speech. It was, briefly, to hold over the License Bill until he could combine it with an amended Income Tax Bill. The principle of taxation embodied in the Income Tax Bill he would have reserved for the higher classes of Income, such as are "fixed and certain" and can be ascertained without prying into people's private affairs, while he would have greatly raised the minimum limit of the Income Tax and the maximum limits of the License Tax, so as to transfer from the former to the latter all smaller incomes, and the greater part of those derived from trades and professions. He would, in fact have assimilated his measure much more to the Bill originally introduced by my Honorable friend the Member for the North-Western Provinces than to the two measures intended by the late Mr. Wilson.

There can be no doubt, that *this* plan had much to recommend it, and had time admitted of a thorough recasting of our system of direct taxation, and had not we been to a great extent pledged to the Income Tax and License Tax as they stand, such a plan as Mr. Laing alluded to in his speech, would have commended itself to the judgment of those who have seen most of the weak points of the Income Tax. But I cannot subscribe to the doctrine that the Income Tax has been, financially speaking, "a failure." On the contrary, I believe that, when the measure has been fairly worked out, it will prove a most valuable addition to our financial system, even if it do not realize all that its able authors hoped for from it. It must be recollected that the tax has not yet been a whole year in nominal existence, and that—owing to the unavoidable haste in which it was passed, the necessity for altering the forms of notices and returns, for making many translations into different languages, and other causes which I need not specify—it was some time before it came into full operation in those districts which were best prepared for it, and that in some of the more backward districts the tax can hardly yet be said to be fully at work. I hold here an imperfect return of collections up to May. In the four first months they did not amount to more than 11,61,235 Rupees altogether, or less than three lakhs of Rupees per mensem. In

December	they rose to ..	Rs.		4,32,000
January	„	„	... „	10,89,000
February	„	„	... „	13,04,000
March	„	„	... „	15,24,000
April	„	„	... „	20,59,000
May	„	„	... „	25,55,000

giving an aggregate of upwards of a million sterling for the first ten months of the tax, during six only of which the tax can be said to have been in effective operation. So that we may trust Mr. Laing's estimate of a million and a quarter for the net annual produce of the tax, will be within the mark.

But though I cannot consider it as a financial failure, there cannot be a question that, whatever its financial results, its effect in a great majority of cases is far more demoralizing here than it is in England, where, as we well know, this inevitable tendency of all direct taxation of Incomes forms one of the prominent objections to this mighty engine of finance. Moreover, the political tendency, if I may so call it, of the Income Tax, is not what can be desired. The demand on a great multitude of people ill acquainted with the objects and usages of our Government, in requiring them to tax themselves, by stating the amount of the Income on which they are to be assessed, was more calculated to puzzle and irritate them than to reconcile them to a new impost. For these and many other reasons, it would have been very de-

Sir Bartle Frere

sirable to have substituted for the machinery of the Income Tax the more simple and intelligible expedient of a License Tax, which, without previous direct enquiry, tells a man what he is to pay, and leaves him, if he can, to prove that he ought to be placed in the lower class and be assessed at a lower rate. But to this course there were the great objections that time did not admit of re-casting the whole system of direct taxation, nor was it possible to attempt such a task without keeping up, for many months longer, the harassing uncertainty which it is most desirable to allay.

Any new arrangements, whatever they are, will have to date from the 1st August, and, however much latitude the Council might leave to the local Governments in arranging the details of the system, it must of necessity be several months before the local officers could know what they were to demand and how they were to demand it and from whom, and before the tax payers could tell what they were called on to pay.

Great as may be the evils of the present system, there can be little doubt that the evils of a fresh re-settlement of the whole question would be far greater. Some months must elapse before the people in the remoter districts could learn how they were to be taxed—for whatever we may settle in this Council-chamber, could not be effectually or intelligibly explained to the great body of rural tax payers, until the cessation of the rains permits the revenue officers to travel about the country, and we should but have had another season of that doubt, discussion, and alarm which the imposition of a new tax, or even of an old one in a new form, must ever create.

Under these circumstances, the Government of India resolved that the best course for raising a larger amount by direct taxation was to proceed with the License Bill, which has been long discussed and fully explained, which is expected throughout the country, and for which people generally are as well prepared as they can be for any tax which they have not actually been called on to pay.

The Bill, as the Council will remember, only awaits the third reading, and we propose no alteration in it beyond the omission of the Clauses imposing a separate duty on Tobacco. The Council is aware how much trouble has been taken to carry out the design of the late Mr. Wilson for laying the foundation of a large revenue from Tobacco, but it has been found impracticable to frame any general measures which promised to produce an income at all proportioned to the annoyance which would be caused by any new measure, taxing what is almost a necessary of life to so many of the poorest class. And we have, therefore, resolved to leave Tobacco to be dealt with locally by the several Governments, who have the means of adjusting their measures, so as to meet the peculiar circumstances of the populations with which they have to deal. Should the Council concur in this view we propose to strike out the Tobacco Clauses, and to pass the remainder of the Bill without further delay.

As regards the Income Tax, the Bill which I propose to ask the Council today to read for the first time, is intended to legalize such modifications as the experience of the past year has shown to be most necessary to make the tax as productive and as little irksome as possible. A great mass of information on this subject has been collected by the several Governments from their most experienced local officers. There are few, if any, who would not prefer the mode of proceeding provided by the License Bill, if we were now discussing this question for the first time. But, taking matters as they stand, there seems little room for doubting that a very great improvement may be effected in the working of the Income Tax simply by recognizing for another year those assessments which have been fairly made and enabling the revenue officers to devote more attention to the assessment of incomes which have been heretofore untaxed, or either inadequately or over-taxed. In other words, by con-

tinuing for the next twelve months all that has been fairly and equitably done in the way of assessment during the period since the tax may be said to have been in actual operation, which no where exceeds eight months and is generally under six; relieving all tax payers who have been so dealt with from further harassment; and suspending, as far as they are concerned, any fresh issue of notices. There can be little doubt, I think, that this will be a great relief to a vast mass of the population, while it will enable the fiscal officers to do justice where the tax has been over-assessed, and to perfect their arrangements for reaching those who have hitherto escaped through inadvertence of the taxing officials, or by successful evasion. Before the end of the twelve months for which we propose to enact this law, we shall be better able to see whether any modification of the process prescribed in the Income Tax Act of last year, can be devised, which shall free it from the formidable objections to the English system, of a notice to the tax-payer—a Return by him of his Income, and Assessment thereon, with powers of surcharge vested in the fiscal officer—or whether it may prove the preferable course to dispense with all this process, and to direct the fiscal officers to classify Incomes as best he can, giving to the tax-payer powers of appeal, with liberty to prove, if he can, that he ought to be placed in a lower class of tax payers—or again, whether there may not be possible some combination of the two systems, such as was suggested by Mr. Laing, which shall better secure the great object of a maximum amount of revenue, with a minimum of that harassment to the tax-payer which is in some degree inseparable from all direct taxation. Power will be reserved to all who desire it to claim assessment under the Act of last year; and assessment under that Act will be legal when no assessment was made last year, or when there is reason to suspect fraud, provided there has been no surcharge. Where any surcharge has been made, it will serve to stereotype the assessment for another twelve months without fresh process unless at the instance of the tax-payer. We propose that the Bill should not be general, but should be applied only to those districts where Government may be satisfied that it will not act unjustly either to the public revenue or the tax-payers. We propose to ask for power to continue it for future years, should it be found to work well. We further propose to give the same power of modifying the forms of notice, &c., to the local Governments which the Act of last year gives to the Governor-General in Council.

These are the principal provisions of the Bill which I now move should be read for the first time.

Before concluding, I must express the obligations of Government to my Honorable friend the Member for the North-West. Had Mr. Wilson lived, he would have acknowledged the valuable advice and assistance he received from my Honorable friend on the first introduction of this great measure; and I am confident that, had he been spared, he would have done justice to the soundness of opinions, which the experience of the past year has proved to be correct. It was in compliance with Mr. Laing's strongly expressed wish, that, when his own health failed, the enquiry into the complaints and objections against the Act and the preparation of a measure for its improvement was entrusted to my Honorable friend; and I cannot omit the opportunity of bearing testimony to the conscientious and disinterested spirit in which the task has been performed, and to the value of the service which has thus been rendered to the Government and the country.

MR. HARINGTON seconded the Motion, and in doing so he begged to thank the Honorable Member, who had made the motion, for the manner in which he had expressed himself in respect to his (Mr. Harington's) services in connection with the Income Tax and License Bills. He was not sensible of having done any thing more than his duty, much less to deserve the eulogium which the Honorable

Member had been pleased to pass upon his conduct.

The Motion was then put and carried, and the Bill read a first time.

BRANCH RAILWAYS, &c.

MR. SETON-KARR moved the second reading of the Bill "to provide for the construction, by Companies and by private persons, of Branch Railways, Iron Tram-roads, common roads, or Canals, as feeders to Public Railways."

The Motion was carried, and the Bill read a second time.

EMIGRATION (SEYCHELLES.)

MR. FORBES moved the second reading of the Bill "relating to Emigration to the British Colonial Dependency of Seychelles."

The Motion was carried, and the Bill read a second time.

LICENSING OF ARTS, TRADES, AND DEALINGS.

The Order of the Day being read for the third reading of the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require Dealers in Tobacco to take out a License—"

SIR BARTLE FRERE moved that the Bill be recommitted to a Committee of the whole Council for the purpose of striking out of the Bill the portions referring to the Tobacco License, and of altering the date of commencement of the Act from the 1st January 1861 to the 1st August 1861.

Agreed to.

After the necessary amendments had been made in the enacting part of the Bill, and before the Committee came to the consideration of the Schedules—

THE CHAIRMAN said,—I have thought much upon this subject, and have considered with great anxiety what is the proper course to be adopted on the present occasion,—whether I should vote against the third reading of the Bill or move an amendment. The Bill has been looked upon and considered by the Council as a supplement to the Income Tax Bill. That Bill has been passed, and I think it would not be right to vote against the third reading of this Bill, which is merely supplemental. I should be averse to do anything which might hamper the Government or throw any difficulties in their way in the present state of the finances of the country, and the more so after the statement which we have heard to-day from the Honorable Member of Government. It was not until Thursday night I was aware of the course which the Honorable Member of Government intended to pursue with regard to the Bill now under consideration,—whether he intended to re-commit the Bill for the purpose of amending it, or to move the third reading of it in the state in which it was left in September last by a Committee of the whole Council. I was therefore unable to give notice of my proposed amendment; but as it involves an important principle, I am quite willing, after stating what it is, to postpone any discussion upon it until our next meeting, if any Honorable Member wish it, or I am ready to proceed with it at once. The Council will recollect that on the 15th of December last I moved for information relative to a grant alleged to have been made to the Mysore family, and to which the attention of the Council had been called by a petition presented I believe in the same month and signed by a large number of the inhabitants and Tax payers of Calcutta. On that occasion I made the following motion:

"That the Government of India be requested to lay before this Council, a copy of the account in which the stipends which have, from time to time, been paid to the descendants of Tippoo Sultan are debited, or such an abstract thereof as will show the total amounts paid and credited in each year, from the year 1799 to the present time.

Also a copy of any Resolution or Order of Government by which the stipends now payable to such descendants were fixed, and of any correspondence between the Government of India and the late Honorable Court of Directors, or the Right Honorable the Secretary of State for India, in consequence of which the same was passed.

And also a copy of any Despatch or Despatches received during the present year from the Right Honorable the Secretary of State

for India, by which any sum of money has been ordered to be paid or secured to any of the descendants of the said Tippoo Sultan, and of any document or documents showing the grounds on which such order was made.

And further, that the said Government of India be requested to inform this Council, whether any sums of money so ordered to be paid to the descendants of Tippoo Sultan, are included in the estimate for the year 1860-61."

I stated upon that occasion that I did not ask for the information in consequence of the petition which had been presented to the Council, but that I asked for it to enable me to perform my duty as a legislator properly when the Trades License Bill came before the Council, and because I wished to assert the right of the Council to ask for such information. I stated that I had a public duty to perform, and that I should endeavour to discharge it even though it might lead to the dissolution of the Council. The right of this Council to ask for such information was disputed by some of the Honorable Members of Government then present. The matter was fully debated, and upon a division, the votes being equally divided, I, as Vice-President, gave my vote for the affirmative. A message was accordingly sent to the President in Council, asking for the information, and on the following Saturday the Council received this message in reply :—

"In reply to the Message from the Legislative Council, No. 182, the President in Council, with the concurrence of His Excellency the Governor-General, informs the Legislative Council that the interests of the public service forbid his ordering that the papers asked for by the Resolution which accompanied the Message, should be laid before the Legislative Council, with the exception of the account specified in the first clause of the Resolution, which will be prepared and furnished to the Council as soon as practicable.

The other papers specified in the Resolution relate to a correspondence with the Secretary of State for India, which is yet incomplete; and the President in Council does not therefore feel that he would be justified in transmitting them to the Legislative Council.

The request of the Legislative Council will, however, at once be made known to the Secretary of State.

The President in Council has the honor to inform the Legislative Council, in reply to the concluding clause of the Resolution, that no payment beyond what has been usual of late years to the family of the late Tippoo Sultan is provided for in any account or estimate, of which the results have hitherto been laid before the Legislative Council."

We were told in that message that the request of the Legislative Council would at once be made known to the Secretary of State. From that day to this we have received no further answer. Whether the Right Honorable the Secretary of State considered that we have exceeded our powers, or that we are not worthy of an answer, I cannot say; but on a subsequent occasion when the Honorable and learned Judge (Sir Charles Jackson) asked a question as to the state of progress which was being made in the erection of the jail in the Neilgherries for the reception of Europeans under penal servitude, it was stated by the Honorable Member (Mr. Laing)—who, I regret to say, has been obliged to go to England on account of his health—that the question was then under consideration of the authorities at home. Thus the matter stands, and we are now called upon to pass this Bill without any further allusion having been made to the subject. I do not even now know whether the payment has been made to the Mysore family; whether Government securities have been issued for the amount proposed to be capitalised; or whether, if issued, the amount of capital has been secured by Government promissory notes drawn up in the usual form, acknowledging that so much money has been received by Government from the Mysore family, and promising to pay the amount within six months after notice given by Government, with interest thereon at 4 per cent. per annum, in the meantime, or promising to pay the amount as a gratuity or pension. The Honorable Member (Mr. Laing) who is unfortunately absent, lately made a very luminous financial statement; but he did not inform the Council whether his estimate included the grant to the Mysore family, whether the payments ordered to be made have been added to the expenditure side of the account, and

Sir Barnes Peacock

the amount capitalised has been added to the amount of the public debt, and the interest thereon has been included in the "3,316,180 Interest on debt" or whether those operations have yet to be performed. Now, it is a remarkable fact that the grant to the Mysore family, made or proposed to be made, amounts in value to something between £400,000 and half a million —and that the Honorable Member should have been obliged to state "that he wanted £500,000 to weather his deficit and get into smooth water with a small surplus." Was this sum wanted in consequence of the grant, or is the amount of the grant to be added to that sum? is a question of no slight importance. It is not a sound argument to say that the annual amount to be paid has been capitalised, and that the amount of interest only is payable at present. If the proposed grant has been carried into effect, the amount of Government debt has been increased *pro tanto*, and the same amount of debt, if incurred on account of cash brought into the public treasury by way of loan, instead of being incurred as a gratuity to the family, would have produced an amount of actual cash according to the market value of the securities. It looks favorable at first sight that the annual amount payable was to be capitalised at the low rate of only 4 per cent. But when the operation is examined, it will be seen that it is more disadvantageous to Government, than if the same annual amount had been capitalised at 5 or 6 per cent. The annual amount to be paid by way of interest is the same either way; but the lower the rate of interest, the greater the amount of debt to be paid whenever the Government may desire to pay off the principal or to redeem it. If £50 a year is to be capitalised, it will require a debt of only £1,000 to be incurred, if capitalised at 5 per cent.; whereas it will require a debt of £1,250 to be incurred in order to produce the same annual amount at 4 per cent. I say this to show that at least there was no benefit to be derived by Government by capitalising the amount at a lower rate of interest than the fair market value.

Three or four months ago I read in one of the Weekly Reviews published in England an article on the subject of this Mysore Grant, containing the following passages :—

> "As for the assertion that the lands transferred by the treaty were only intended to provide for the dethroned House, it is a flagrant instance of the perversities into which an English lawyer may be led when he is taken out of his proper sphere."

Then after alluding to me as "a lawyer of the peculiar English special pleading stamp," the writer proceeds :—

> "If indeed he set at nought by his opinion the higher obligations of Imperial honor, we have no right to blame him, for it was not his business to attend to them. If these were forgotten in *Lord Dalhousie's* minute, it was Lord Dalhousie's own fault, and it was an instance of his habitual failing."

I read that statement with pain, because I knew that it was unfounded, and it grieved me to think that such an attack should be made upon the character of a nobleman just after his decease and when it was out of his power to defend himself. But my mouth was closed. The Minutes had not then been produced, and they had not then been published. All the knowledge which I then possessed upon the subject was acquired whilst I was a Member of the Executive Government over which that Nobleman so ably presided—a man noble, not only by birth, but noble in mind, and ennobled by his own deeds. That article was of course anonymous. I know not whether the author of it was behind the scenes and had seen the minutes or not. I hope that he had not; for if he had read them before he wrote the article, he could not, in common fairness, have made the statements contained in it, and I do not envy him whoever he may be. "The instru-
"ments of the churl are evil, but the
"liberal man deviseth liberal things,
"and by liberal things shall he stand."

On the 8th February last an explanation was given by the Secretary of State in answer to a question put to him by Mr. Vansittart in the House of

Commons. He is reported to have made the following statement :—

"When Tippoo Sultan was killed, Lord Wellesley determined not to reinstate his family on the throne of Mysore, but to substitute the descendants of the old Rajah. A treaty was made with the Nizam, who had been our partner in the war, for dividing equally between them these territories, which they had determined to take away from the Rajahship of Mysore. The Governor-General undertook the custody and maintenance of the family of Hyder Ali and Tippoo Sultan, and in order to enable him to do that a territory producing in round numbers 70,000*l.* a year was assigned to the Government of India, over and above their half of the conquered territory. The engagement into which they entered was :—

'To provide effectually for the suitable maintenance of the whole of the families of the late Hyder Ali Khan and of the late Tippoo Sultan, and to apply to this purpose, with the reservation hereinafter stated, an annual sum of not less than two lacs of star pagodas, 70,000*l.*'

The spirit in which this arrangement was regarded by those who were most cognizant of the circumstances, and had most to do with the matter at the time, will be shown by two short extracts which I will read, one from a letter from Lord Wellesley and the other from a letter of the Duke of Wellington. Lord Wellesley wrote to the Court of Directors :—

'I determined at the same time to grant to the families of Hyder Ali Khan and Tippoo Sultan a more magnificent maintenance than either had enjoyed during the late reign.' It has been contended by some persons that it was incumbent on the Government to allot for the maintenance of these families the whole of the revenue of the ceded territory—that is to say, 70,000*l.*, and it is quite clear that the Duke of Wellington entertained some such idea. The sum allotted to them was nothing like that, and the Duke of Wellington writes to his brother :—

'The family don't now spend more than half the sum allotted to them by treaty, and there surely can be no grounds for this shameful breach of faith with persons in our power.'

I don't at all concur in that view. I only quote it to show that the Duke of Wellington, who had a large part in these transactions, and was cognizant of all that took place, did entertain a view which might justify the supposition that at that time at least they were entitled to the produce of the whole of the ceded territory. They received, in fact, much less. The Government of India engaged to apply to the purposes of their maintenance the produce of those territories subject to two reservations—one, that the Government should have the right of making a reduction in the stipend on the decease of some members of the family; the other was that if the family were guilty of disloyalty to the Government of India, or attacked the territory of the Rajah of Mysore, the stipend might be withdrawn altogether. In 1806 occurred the mutiny of Vellore, the mutiny of the native troops arising from circumstances totally unconnected with political motives; but the troops availed themselves of the presence of one of the sons of Tippoo Sultan, took him from the barracks, and placed him at their head. That is the foundation of the assertion referred to by the honorable gentleman, that the family had been guilty of mutiny, and had thereby forfeited all claims on the Government of India. The circumstances were inquired into at the time by the then Governor-General, Lord Minto, and he recorded his deliberate opinion that they did not affect the claims of the family to a liberal maintenance from the British Government. Lord Minto said —'It still becomes us to show as much generosity towards these families as is consistent with public security under present circumstances.' The public security was the only limit which he considered could be put on their claim to a generous treatment, and that security was taken by removing them to Russapuglah, near Calcutta. At this place they have lived ever since, shut up by themselves, and intermarrying among themselves, and every gentleman who is aware of the mode in which Mahomedan families live, shut up in this way, and intermarrying among themselves, will not be surprised to learn that the social and moral state there is not one which it is desirable to perpetuate. The produce of the territories allotted for the maintenance of the families was kept entirely apart from the general revenue in a separate fund, which was called the Mysore Deposit Fund, and the sums spent upon the family were so much less than the produce of the territory than in 1855, when the money was merged into the general receipts of India, there had accumulated from the savings in that respect no less a sum than 600,000*l.* In 1852, Prince Gholam Mahomed addressed a memorial to the Court of Directors claiming that the whole sum of 70,000*l.* a year should be spent on the families, and that the 600,000*l.* which had accrued up to that time should also be paid over to them. The Court of Directors very properly refused to admit that claim, saying that the family had no claim either to one or the other, but that to which they were entitled was a fair, suitable, and liberal maintenance. Gholam Mahomed came over to this country in 1854, and was here for some time. The Home Government directed then, as now, that an addition should be made to his allowance, and to that of certain other members of the family, and these directions were transmitted to Lord Dalhousie. It is perfectly true that Lord Dalhousie did not think there was any such claim. Sir Barnes Peacock, who has borne a prominent part on the present occasion, recorded his opinion that inasmuch as these persons were no parties to the treaty of Mysore they had no legal claim under that treaty. Lord Dalhousie thought it exceedingly desirable to support that opinion, and

Sir Barnes Peacock

proposed to cut short some part of the disbursements, and that after the fourth generation they should cease altogether. So far as the legal claims of the parties under the treaty goes, no doubt they have no claim at all. But that does not seem to me in the slightest degree to impair the equitable and moral claim of these persons, who are the descendants of those whom we dispossessed of their territories, to that which was recorded in the treaty, and to which Lord Minto and every other Governor-General considered them entitled. The next question was, whether it was possible to discontinue these payments at any time, and on this point the Home Government took the more just and equitable view, and they stated that they could not consent to these people being turned out loose on the streets destitute of all means of subsistence, and that such a course would be utterly unjust and incompatible with all sound notions of the policy which ought to be pursued towards the descendants of deposed princes. They asserted that in their view they were entitled to fair and liberal consideration, and they entirely declined to adopt the views of Lord Dalhousie, which I think were most impolitic, harsh, and unjust. So matters stood until 1858, when my noble friend (Lord Stanley) became President of the India Board. Gholam Mahomed then addressed a letter to him, and came over to this country again. He arrived a short time before I became Secretary of State. There was another question pending at the same time, and a Committee was appointed to consider both cases. A good deal of communication took place, and the result was the arrangement which has been made. I should perhaps have said that during the whole of the time both the Government of India and the Government at home felt the importance of putting an end to the existing state of things, which was extremely detrimental."

With respect to the letter from the Duke of Wellington to his brother, it does not seem to have much to do with the subject, inasmuch as the Secretary of State does not concur in that view; but as it was referred to, I think it right to say that I hold in my hand a letter written by the Duke of Wellington on the 26th September 1803, which shows that by the word "family" in the letter to his brother, he could not have meant the descendants of Tippoo for ever, but the then existing members of the family. The letter to which I refer is published in the 2nd vol. of the Dispatches of the Duke of Wellington by Colonel Gurwood, p. 345. It shows that the Duke of Wellington considered that the pensions ought to cease after the death of the children of the Princes who were then living. I do not think it necessary to read the whole letter. The following is the part which materially relates to this question:—

"It is my opinion that the pensions allotted to the princes ought to be continued to their families in the following manner—

One half of the pension of each ought to be allotted to the support of his mahal, and this half ought to fall to the Company as soon as there should be no longer any woman in the mahal to be supported, in the same manner as the sum now allotted to the support of Tippoo's mahal will fall to the Company. Care ought to be taken that after the death of any of the princes no woman should be introduced into his mahal. The other half of the pension ought to be allotted to his children, to be divided among them in equal proportions according to the Mussulman law—

The children ought to remain in the mahal to be supported and educated at the expense of the Company, till fifteen years of age, at which period they ought to be removed from it, and their share of the father's pension allotted to them together with a sum of money to set them out."

Now as to the statement that "Sir Barnes Peacock recorded his opinion that *inasmuch as these* persons were no parties to the treaty of Mysore, they had no legal claim under that treaty, and that Lord Dalhousie thought it exceedingly desirable to support that opinion," I must say that if I had read that statement without knowing any thing of the real facts, I should have thought that the whole question of the moral or equitable claims of the family had been wholly disregarded by Lord Dalhousie and myself, that I had originated the point, and that Lord Dalhousie had thought it very desirable to avail himself of it and to support my opinion.

At the time when this explanation was made by the Secretary of State the papers had not been published or laid upon the table of the House, and it was impossible without them to form a correct judgment upon the merits of the case. No one reading the statement of the Secretary of State would have imagined that a Despatch had been sent from the Court of Directors to the Government of India, as far back as the 4th of January 1854, upwards of a year before either Lord Dalhousie's Minute or mine was writ-

ten, and before the matter had ever been brought under my consideration, containing the following paragraphs :—

"The provision made for them in 1799 *was not the subject of any engagement with themselves.* It was an act of spontaneous liberality on the part of the British Government, *and a matter of arrangement between the Government and its ally the Nizam;* and even as such it was made expressly dependent upon a condition which has not been observed. The Nizam, moreover, by the treaty itself, left the British Government the sole judge of the failure. All the promises ever made to the family have been far more than fulfilled ; *there is a point at which liberality must stop, and it would be contrary to our duty, when the public faith is in no way pledged, to continue a gratuitous assignment of the public revenue in favour of individuals for an indefinite series of generations.* The living members of the family have a just claim on us for support, but not so their unborn descendants."

Such a Despatch would be found at page 25 of the printed papers, and it is expressly stated in that Despatch that "the Vellore mutiny in which one at least of the sons of Tippoo was proved to be implicated, constituted such a case as was contemplated in" that article of the treaty which reserved to the British Government the right "to limit or suspend entirely the payment of the whole or any part of the stipend" in the event "of any hostile attempt on the part of the family, or of any member of it, against the authority of the contracting parties or against the peace of their respective dominions." That Despatch was written in consequence of a petition which had been presented by Prince Gholam in 1852. Here allow me to remark that no Political Despatches of that nature could be sent by the Court of Directors to the Government of India without the previous sanction of the Board of Control. When the Despatch of 1854 was written, Sir Charles Wood was the President of the Board.

I have not attempted to occupy the time of the Council by going into statements merely for the purpose of vindicating the opinion of Lord Dalhousie and myself, nor should I do so now unless we were asked to pass a Bill for taxation. I wish to satisfy the Council that the opinion which I expressed on a former occasion is correct; that the Mysore family had no claim, legal, equitable, or moral, to the provision which has been made or is about to be made for them, at an expense to the State of between £4,00,000 and £5,00,000, and that their just and equitable claims were not overlooked in the Minutes to which reference has been made by the Secretary of State. On the 21st May 1854, Prince Gholam Mahomed being then in England, wrote to Lord Dalhousie a letter in the nature of a petition, and for a third time asserted the claim of the family of Tippoo to the whole amount, prospectively and retrospectively, of the sum set apart under the Treaty of 1799, and he relied *upon a Minute of Lord Minto as the charter of his claims and as the basis of all arrangements for the benefit of the family.* He stated that one important benefit was obtained by the family in the year 1841, when the Honorable Court of Directors was pleased to sanction the allotment of a provision for sons arrived at maturity during the lives of their fathers (printed papers, page 27), and it was to that petition and principally to that statement that the paragraph in my Minute respecting the Treaty being *inter alios* referred. A copy of that Memorial was sent by Prince Gholam Mahomed to the Court of Directors, and in February 1855, he again wrote to the Court of Directors and also presented to them another Memorial.

Lord Dalhousie was at that time Governor of Bengal, but the matter was referred to the Government of India for consideration. On the 24th January 1855, Lord Dalhousie wrote his Minute, in which having stated that he had carefully studied the treaty, the Minutes referred to in the memorial, and the history of the transactions between the Government of India and the Mysore family, he proceeded—

"I am wholly unable to see that Prince Gholam Mahomed or his family has any ground of just complaint, or that any change should be made in the footing upon which the family has been placed. *In truth I conceive*

that nothing can be added to the Despatch No. 1 of 1854, in which the Honorable Court discussed and disposed of the alleged claims of the family of Tippoo Sultan."

That is the Despatch of the 4th of January 1854 to which I have before alluded. Lord Dalhousie then proceeded to consider, 1*st*. Whether the Mysore family had a right, by the treaty of 1799, to the full stipend alloted to it by that treaty—and 2*ndly*. Whether if it had no such right by treaty, it had such a right by virtue of any other document. And he declared that he had no hesitation in saying that in his opinion the family had no right to the full stipend either by treaty or by any other pledge. So far then from Lord Dalhousie thinking it desirable, as alleged by the Secretary of State, to act upon my opinion "that, inasmuch as the family were no parties to the treaty, they had no legal claim," he adopted the opinion expressed by the Honorable Court of Directors in the Political Despatch of January 1854. Mr. Dorin and General Low concurred. Mr. Grant wrote a long and very able Minute and went very fully into the whole matter (page 65.) He treated the letter of Prince Gholam Mahomed to Lord Dalhousie as a request to have the question reconsidered. With reference to the decision of the Court of Directors contained in the Despatch of 1854, he says:—

"In March 1853, the Superintendent of Mysore Princes, at the earnest request of Prince Gholam Mahomed, sent up a duplicate of the Prince's former Memorial which was forwarded to the Honorable Court for reconsideration of the matter. The Honorable Court upon this second occasion went fully into the merits of the claim, and in their Despatch in the Political Department No. 1 of the 4th January 1854, absolutely negatived its validity whether on the ground of the treaty relied upon, or upon the ground of a resolution of Lord Minto's Government in 1807, which had been adduced by the memoralist as strengthening his case."

He says:—

"We have now before us a letter dated 21st May 1854 for disposal, which Prince Gholam Mahomed, dissatisfied with the Honorable Court's decision upon his claim, has written to the Governor-General from London. In this letter the Prince says that he has been told the substance of the decision to which the Honorable Court of Directors has come, and that he apprehends that the Honorable Court must have been under a misapprehension in respect of the real nature of the position and claims of the family. On this ground he proceeds to re-argue his case.

* * * *

Having studied the papers I am unable to perceive that the Honorable Court has misapprehended in the least degree *the grounds upon which their decision has been based.*"

He then proceeds fully to consider and discuss the whole question as regards the legal and moral claims of the family.

The case then came to me. I read and considered the whole of the documents, and discussed the question as to what was the proper construction to be put upon the treaty. Having considered what was the meaning of the word "families," and expressed my opinion that it was not intended to mean descendants for ever, I said:—

"But even if the word 'families' in the first article of the treaty could by any possibility be considered to mean the descendants of Hyder Ali and Tippoo Sultan for ever, which the clear and forcible arguments of Mr. Grant have proved to be utterly untenable, there can be no doubt that by the participation of one of the members of the family in the mutiny at Vellore, the East India Company were entirely released from their obligation to provide for the family. *Their contract was with the Nizam and not with the Mysore family*, and it was one of the stipulations of the contract that in the event of any hostile attempt on the part of the family, or of any member of it against the authority of the contracting parties, the East India Company were to be at liberty to limit or suspend entirely the payment of the whole or any part of the stipend stipulated to be applied to the maintenance and support of the said families.

The event provided against happened, and the Company were no longer bound by any obligation to provide for a single member of the family.

But the liberality of the Company induced them to abstain from acting upon their strict rights, and from visiting upon the innocent members of the family the crime of the guilty member. They never entered into, nor intended to enter into, any new engagement with the Nizam: and it is unreasonable to suppose that either Lord Minto or the East India Company intended to bind themselves by any contract or pledge to the Mysore family after the insurrection at Vellore, when in fact they were not bound by any such contract or pledge previously entered into with them.

* * * * *

That Lord Minto never could have entertained the idea that every descendant of Tippoo was to be maintained for ever at the expense of the State, is, I think, clear from the following extract from His Lordship's Minute.

He says :—

'It cannot but be felt on the bare statement of the proposition that to retain twelve families composed at present of upwards of 300 persons and subject to the natural growth of all societies, especially when favoured by polygamy and an unlimited number of females to retain, I say, such a multitude in that condition and to provide for them on the footing of State prisoners of rank, must be an undertaking of such difficulty, complexity, and embarrassment as to become in the end impracticable.' It may be said that the above remark applies merely to providing for the family upon the footing of State prisoners of rank, but the argument applies equally to maintaining them in any manner at the expense of the State."

It had been suggested by the Bengal Government that no new pension should be granted to any of the descendants of Tippoo then unborn, and that, except in special cases, no allowance in the form of a life pension should be granted after the 1st May 1860, exceeding in amount what might be sufficient to secure a decent subsistence. It was considered both by Mr. Grant and by me, that that rule might operate too harshly upon the issue of a very worthy and excellent member of the family, Prince Gholam Mahomed. It was pointed out that such a rule would exclude any child of Prince Gholam who might thereafter be born —that, even as worded, the rule might cause anxiety and distress in the mind of Prince Gholam as to the course which Government might pursue in the event of his death, with reference to the provisions for his widows and descendants, as he would not be sure that they would be treated as exceptional cases. As soon as this was pointed out to Lord Dalhousie, he readily conceded the point—and remarked—

"My Honorable colleagues, Mr. Grant and Mr. Peacock, both considering that those recommendations are too stringent and are likely to be regarded as unnecessarily abrupt, and harsh in their operation, I readily defer to their opinions."

I mention this to show that at that time the mere legal view of the case was not alone considered, but that the just and equitable claims of the family were fully discussed and considered both by Lord Dalhousie and his Council, having reference to every reasonable expectation of the family, arising from the manner in which the liberality of the Company had been extended to them.

On the 29th June 1855, the Secretary to the Court of Directors wrote to Prince Gholam Mahomed, informing him that

"they felt bound to record their adherence to the promises and principles of Lord Minto's Minute, as well as the gradual extinction of the family's position of dependence, that the Government of India would be instructed to deal as liberally with the members of the family as might appear strictly consistent with that view."

He added :—

"In recognition of your position and the respectability of your character, the Court have determined to direct the Government of India to make an addition of 1000 Rupees per mensem to your pension, to commence from the date of your arrival in India, and as a further mark of their approbation, and to enable you to return to India in a manner suitable to your position in society, they have resolved to present you with the sum of £3000."

On the 6th August 1855, Lord Dalhousie wrote from Ootacamund to the Court of Directors :—

"Whilst I am compelled to negative the claim which the Prince has advanced as of right on the part of himself and the Mysore family, I feel confident that I am only expressing the sentiments of my Honorable colleagues at the Presidency, when I assert that any consideration which your Honorable Court may now be disposed to show to the Prince himself, will be received with satisfaction by the Government and the Community.

Prince Gholam Mahomed is now the only surviving son of Tippoo. In his life and character he has set a praiseworthy example to all his countrymen and specially to princes and chiefs in positions resembling his own. He is universally respected and esteemed by the whole European community as well as by his own countrymen, and I have long been happy to regard him as a personal friend. I am convinced, therefore, that the entire public would be not less gratified than myself if your Honorable Court should now be pleased to bestow upon the prince some increase to his personal stipend, which at present amounts to

2,096 Rupees, as an additional proof of your kindness and generosity."

On the 20th February 1856, the Court of Directors, in answer to Lord Dalhousie's letter of the 6th August 1855, wrote as follows :—

"We observe that every Member of your Government concurs to the fullest extent *in the opinion expressed in our letter No.* 1 *of* 1854 respecting the entire absence of any obligation by treaty or engagement on the part of the British Government, either to appropriate to the benefit of the descendants of Tippoo Sultan, the whole of the money specified in the first article of the treaty of Mysore, or to support the family at the public expense. The able discussion of the whole subject contained in these papers has even strengthened our view of the case by additional proofs, and the letter which has been addressed by the Secretary with the Governor-General is an elaborate summary of the argument. We are much gratified to find that the Governor-General and other Members of your Government had determined to recommend to us the increase of the stipend of Prince Gholam, which our Political letter, dated 4th July last, will have subsequently apprised you that we have already granted."

Further correspondence took place between the Court of Directors and the Government of India. In a Political Despatch, dated 4th July 1855, the Court of Directors said :—

"The first point is the inequality of the pensions allotted to members of the family, who are by descent of the same relation to their common ancestors. Gholam Mahomed is the only surviving son, and he has furnished us with a list of the grandsons, who it seems are 25 in number, all of advanced age, and receiving pensions varying from 543½ Rupees per mensem the highest, to 132, the lowest amount. *He asks for all these* a uniform rate of 600 Rupees per mensem. He also asks for a similar equality of pension for the grand-daughters at the rate of the highest existing allowance, viz., 261 Rupees a month.

* * * *

Under the assurance afforded by the present condition and limited number of grandchildren and especially the advanced age of all of them, we think a revision may now be made of the pensions they enjoy. All children being by Mahomedan law equal in civil rights, you have hitherto in granting pensions made no distinction in this respect, and we are willing to concede, if no objections occur to you, the uniform rate of pension of 600 Rupees per mensem to the grandsons; but in granting this boon we desire you to intimate to all the members of the family that children born of Khowasses shall be placed on an entirely different footing and shall not be entitled to pension. In readjusting the pensions of the grandd-aughters and such of the great grandsons and their sisters as are not dependent upon their father, we should wish them to be treated with corresponding liberality. * * * *

While thus increasing the pensions of many members of the family who are more immediately connected with the former Rulers of Mysore, we think it right, in conformity with the principles laid down in previous Despatches, to direct your attention to the expediency of devising a scheme for the eventual discontinuance of the present system and for the future absorption of the descendants from Tippoo in more remote degree among the mass of British subjects in India, and the scheme which we suggest for your consideration is the following: On the death of any of the grandchildren of Tippoo you should ascertain the relations of such deceased persons and grant to them *suitable pensions, with a notice that each pension shall cease with the life of the grantee.*"

The whole matter was taken into consideration by the Government of India, and they framed certain resolutions which were transmitted to the Court on the 8th April 1856. By the first resolution Prince Gholam's pension was increased from 2,096 Rupees per month to 3,096 per month from the 1st of August 1855. By the 2nd the allowances of the grandsons, then varying from 543 to 132 Rupees a month, were equalised, and a uniform stipend of 600 Rupees a month *(the full amount asked for by Prince Gholam on their behalf)* was assigned to each grandson for his life, lapsing at his death. By the 3rd the allowances of the grand-daughters, then varying from 261 to 66 Rupees per mensem, were equalised, and a uniform stipend of 261 Rupees *(the full amount asked for on their behalf)* was assigned to each of the said grand-daughters for her life, lapsing at her death. The 4th provided that, on the death of any grandson or grand-daughter, the Superintendent should report the number and names and relationship of those relations who had been supported on the stipend of such deceased person, and that it should be competent to the Government of India, on a consideration of all the circumstances then existing, to assign to each or any of them such pension or pensions as they might think proper. By the 7th Resolution the allowances then received by the great grand-

sons, varying from 190 to 50 Rupees each, were equalised, and a uniform stipend of 200 Rupees per mensem was assigned to each of such great grandsons for his lifetime, lapsing absolutely and finally at his death. By the 8th Resolution, in like manner, the allowances then received by the great grand-daughters varying from 90 to 21 Rupees per mensem, were equalised, and a uniform allowance of 100 Rupees per mensem was assigned to each of such great grand-daughters for her lifetime, lapsing absolutely and finally at her death. It was also provided that, whereas by the 7th and 8th Resolutions the existing stipends of great grand-sons and great grand-daughters were to be raised to 200 and 100 Rupees respectively, it was resolved that on the decease of any grand-child the Government should be at liberty to assign to the sons and daughters then living, and not being sons and daughters born of Khowasses of such grand-child, pensions of 200 Rupees and 100 Rupees a month respectively, granting to the other relations who might have been supported on the stipend of the deceased such allowances as it might think proper, provided that all pensions granted to sons and daughters and other relations of such deceased grand-child, should lapse absolutely and finally on the death of the grantee.

On the 2nd January 1857, the Court of Directors replied to that Despatch. They said :—

" In the general tenor of the provisional Resolutions submitted to us in the Despatch under reply, we fully recognize your attention to the policy indicated by us in former communications. The first, second, and third of these resolutions are indeed in strict conformity with the orders or suggestions of our previous Despatches, and therefore have our entire approval.

The fourth Resolution declares that, on the decease of any grand-child of Tippoo Sultan, the Superintendent shall report fully upon the circumstances of his or her surviving family and that it shall then be in the discretion of the Government to assign to each or any of them a pension not exceeding in amount that assigned by the proposed Resolutions to any person standing in the same degree of relationship to Tippoo Sultan. And after adverting by anticipation to the 7th and 8th Clauses, by which it is proposed to fix the stipends of the great grand-sons and great grand daughters of Tippoo Sultan respectively at 200 Rupees and 100 Rupees per month, you have inserted in the Resolutions a proviso that ' all pensions and allowance, so granted to the sons and daughters and other relations of such deceased grand-child of Tippoo Sultan shall lapse absolutely and finally on the death of the grantees.'

This Resolution has been framed in accordance with our Despatch of the 4th of July 1855, in which we said : ' On the death of any of the grand-children of Tippoo Sultan, you should ascertain the relations who have been supported on the pension of such deceased person, and grant them suitable pension with a notice that each pension must cease with the life of the grantee.' But we did not desire by these instructions to direct the absolute and final withdrawal of all support from members of family beyond the fourth generation. When we undertook to maintain the families of Hider Ally and Tippoo Sultan, no specific limit was assigned to the number of generations for which we were to make provision. On the other hand the assignment of stipends in perpetuity to generation after generation of the Mysore family without reference to the continually increasing number of stipendiaries, is an evil never contemplated and against which it is manifestly necessary to guard. But we are of opinion that the claims of legitimate descendants cannot in all cases be equitably ignored. We consider therefore that it will be expedient to omit the proviso of absolute lapse, and by your practice to establish the principle that beyond the fourth generation the members of the family must expect only such assistance from the British Government as may at the time appear to be called for on a full consideration of the circumstances of each individual case."

Thus the matter seemed to be finally settled.

The stipends of all the family from Prince Gholam down to those of the great grandsons and great grand-daughters of Tippoo had been fixed at the highest amount asked by Prince Gholam Mahomed. They had been approved by the Court of Directors and Board of Control ; but it was considered by the Home Authorities that, instead of providing for the absolute lapse of pensions which might be granted to children of great grand-children, or descendants in the fourth degree, the proviso for absolute lapse should be omitted, and that the Government, instead of binding themselves by a proviso to that effect, should " by their practice establish the principle that beyond the fourth genera-

tion the family must expect only such assistance from Government as might at the time appear to be called for on a full consideration of the circumstances of each individual case." But Prince Gholam Mahomed, emboldened by success and encouraged by the great liberality with which his Memorials had been met—both by the Government here and by the authorities at home—again went to England, and on the 1st June 1859 presented a further Memorial to the Secretary of State.

Now in the year 1859 the finances of India were in a most deplorable condition, so much so that it was thought necessary towards the end of that year to send out a financial Minister. In the early part of 1860, the late Mr. Wilson estimated the deficiencies up to the 30th April at upwards of nine millions sterling, and stated that he could not reduce the deficit of the next year below £6,500,000. He spoke of the land revenue and of the revenue derived from Opium. He pointed out the nature of the taxes then paid, namely, Customs, Excise, Abkaree, Salt, and Stamps. He called upon this Council and the public to aid the Government; and in order to place the finances of the country in a sound and healthy state, he amended the Customs Act and proposed two new taxes, the Income Tax, and a Trades License Duty. This Council willingly lent their aid. The Income Tax Bill was passed. The present Bill went through Committee of the whole Council—and every one appeared willing to assist, as far as he could, to meet the emergency. It was disheartening to find that, whilst this was being done here, the authorities at home had been adding to our difficulties, by ordering a lavish expenditure of the value of nearly half a million sterling in the face of the dissents of three of the Members of the Council of India, and against which (as now appears from the printed papers) the Governor-General and every Member of his Council thought it to be their duty to protest as soon as the orders arrived in this country.

Now let us examine the grant. The stipends of each of the grandsons, which by the Resolution of this Government in 1856 were raised to £720 a year, are raised to £1,200 a year—of which, one-half was to be capitalised and to go to his heirs for ever. In like manner, the stipends of each of the fatherless great grandsons, raised in 1856 to £240 a year, were increased to £360 per annum, of which two-thirds were to be capitalised and to go to his heirs for ever. Any holder of the capital stock, if he died without legitimate issue, was to be at liberty to bequeath it to any member of the Mysore family, but to no other person—a privilege which never existed before, and is novel and unheard of as regards pensions for personal maintenance. Further, it having been represented to Her Majesty's Government that, *owing to the high price of provisions* and other causes, the members of the family were generally involved in debt, each grandson, whether in debt or not, was to have 15,000 Rupees and each great grandson 5,000 Rupees paid to him immediately, with a view to relieve him from present embarrassment. Whereas, by the 7th Resolution of Lord Minto's minute, it was provided that, if any debts or arrears of payment should be incurred by any of the princes, their liquidation should be provided for by retaining a sufficient sum for that purpose out of the allowances for the ensuing month. Lord Minto in his Minute says :—

"The knowledge of this on the part of the families, will no doubt serve to give an early check to irregular or prodigal dispositions."

By the 3rd Resolution of Lord Minto's Government, the allowances were to defray expenses of every kind, including house-rent, purchase of houses, &c. But as the removal from Russapugla was thought desirable and would be attended with additional expense, Sir Charles Wood wrote in his letter of the 11th June 1860 :—

"I have intimated to Prince Gholam Mahomed that I am prepared to sanction the payment to each of the grandsons of the sum of

15,000 Rupees, and to each of the great-grandsons being heads of families of 5,000 Rupees, to be expended in providing a permanent residence in some other locality. It is also the desire of Her Majesty's Government that, if requested by any proprietor of houses at Russapugla thus evacuated, you should purchase their property at the market value."

He says further :—

"There is little room to doubt the ready concurrence in every head of a family in the proposed arrangements. * * *
In the possible event, however, of any Member declining to accept the proposed terms, the present state of himself and his family will be strictly maintained."

It was provided by Lord Minto's Resolution—

"that on the decease of any of the persons to whom the allowances were then assigned, Government reserved to itself the power of making such provision for their widows, descendants, or other members, as should be deemed proper under the circumstances then existing."

But I find nothing either in Lord Minto's Minute or in his Resolution which requires the assent of any member of the family to any provision which the Government might think proper to make for his children after his death. It appears to me to be wholly at variance with the stipulation of Lord Minto's Resolution, which leaves it to the Government to make upon the recipient's death such provision for his family as should be deemed proper under the circumstances which might then exist. If the Government were not under any legal or moral obligation to provide for the heirs, whether then born or unborn, of a recipient of a stipend, they were surely not bound, either morally or legally, to obtain the consent of the recipient or of the family generally to any arrangement that might be made by them to secure a provision for such heirs. Still less could there be any necessity to increase the stipend of a recipient, in order to obtain his consent that the Government might capitalise for the benefit of his heirs an annual sum which it was at the option of Government to give or withhold. Yet in the 18th paragraph of the letter from Sir Charles Wood to the Governor General in Council, dated 4th February 1861, he says :—

"Your Lordship will perceive that the then capitalisation of existing stipends in whole or in part for the benefit of posterity *would have been little inducement to present incumbents to accept the proposed terms, but coupling it with some immediate increase of their stipends for their lives*, a boon which Prince Gholam Mahomed, whilst asking nothing for himself, earnestly solicited for them on the score of the distressed condition of many members of the family, I had no doubt of the willingness of the principal members to accept the proposal. I therefore consented to raise the stipend of the grandsons of Tippoo Sultan from £720 to £1,200 a year, of which one-half was to be a personal allowance terminable with their lives, and the other half to be paid to them as interest on the capital stock funded for their families. At the same time I raised the stipends of the existing great grandsons being heads of families from £240 to £360 a year, of which one third was to be considered as personal allowance."

The same observation applies to the reasons given for not consulting the Government of India previously to making the grant. In the same letter of the 11th June 1860 from the Secretary of State in Council to the Governor-General in Council, the Secretary of State says :—

"I must first, however, inform your Lordship that, *in thus re-opening a question which the Court of Directors and your Lordship's Government had considered to be definitely settled, I by no means intended to question the justice of the previous decisions or the liberality of the last arrangements which had been made* for the increased endowments of the Mysore family. But it appeared to me that *the presence of the head of the family in England afforded a favorable opportunity for ascertaining their views with respect to a scheme* by which I hope to realise the frequently expressed desire both of the Indian and the Home Governments, to place the descendants of Hyder Ali and Tinpoo Sultan eventually in a position of independence. *The prospective benefit* of such an arrangement might, I thought, *be advantageously purchased by some present sacrifice of revenue.*"

Even if the consent of Prince Gholam to the proposed arrangement, if approved by the Government of India, were necessary, there would have been no difficulty in obtaining it by letter had he returned to Calcutta before the

opinion of the Government of India had been received at home.

I think I have shown that there was no violation of the national honor in the arrangement made by Lord Dalhousie's Government in 1856; that the Government of India did not then deal with the question, or propose to deal with it, upon the basis of the strict legal rights of the family under the treaty. They took a broad and liberal view of the whole question, and the terms upon which it is admitted that both the Court of Directors and the Government of India considered that the question had been definitely settled were in my opinion most liberal. I was glad in 1856 to see Prince Gholam Mahomed's stipend increased from 2096 Rupees to 3096 Rupees a month, it having been fixed in Lord Minto's time at only 716 Rupees a month. But I cannot help thinking that the late grant is a useless and lavish expenditure of the public money.

I should not have been called upon to express my opinion upon this subject if the ordinary revenues of the country were sufficient to meet the expenditure. But when we are called upon to vote in support of extraordinary taxes, I think that I have a right to consider why they are required, and how they are to be expended.

I feel, therefore, that I am justified in asking the Council to take care that, when they vote for the imposition of new and extraordinary taxes, they provide some security that those taxes shall be expended for the purpose for which they are raised. I lay no claim on the part of this Council to act in the nature of a Grand Inquest of the Nation, or to stop supplies, or any other absurdity of that kind; but I do claim the right on behalf of this Council to take care, when they are called upon to vote for taxes for one purpose, that those taxes shall not be used for a different purpose. We ought to have some sort of control over the taxes which we grant. I do not propose to pass a general Appropriation Act. That would be far beyond our duty and our powers. We have not been entrusted with Executive duties, and have not the means of judging of or controlling the ordinary expenditure of the country. Then how are we to obtain this control? The question has caused me some anxiety and much thought. We might declare that the taxes are not to be spent in the payment of new or extraordinary pensions or stipends, but that would be useless unless we have the control of all the other revenues; for the ordinary revenues would be applied to the payment of the pensions, and the proceeds of the taxes applied to make good the deficiency thus caused. We might say that these taxes shall not be given away without consideration, but the ordinary revenues might be given away, and the taxes would have to make good the deficit. The Council should bear in mind that, when they pass an Act, they have no power of themselves to repeal it. The repealing Act cannot come into force without the assent of the Governor-General—and, even if such consent were given, the repealing Act might be disallowed at home, and the original Act might thus be retained in full force. I do not propose to pass an Act to restrain the Secretary of State in Council from granting extraordinary pensions or gratuities. We cannot alter the constitutions of the country as settled by the Charter Acts. But I think it is inconsistent that new taxes should be levied on the people of this country, whilst large sums of money are being granted by way of new and extraordinary gratuities and must indirectly fall upon such taxes. If the ordinary finances of the country were in a state to pay such pensions without creating a deficit, well and good. It was not our duty to interfere. But we had a right to say that, as soon as it is considered necessary by the Executive authorities either here or at home to make such grants, then the taxes which depend upon our votes shall cease. I am willing to treat all the taxes named by Mr. Wilson, such as Customs Duties, Excise, Abkaree, and Salt, as ordinary revenues like the receipts from Opium and Land Revenue. But I look upon the Income Tax and the Trades License duties, which are merely temporary taxes

granted under special circumstances, as not included under the head of ordinary revenue, and I propose that, except as to arrears due, those taxes shall cease if at any time the revenues of India shall become chargeable with any new or extraordinary pensions or gratuities granted during any one period of twelve calendar months exceeding in the whole two lakhs of Rupees or £20,000, or with the payment of the principal or interest on any Government Promissory Notes or other Government Securities issued after the passing of this Act and made payable to any person or persons by way of pension or gratuity or without adequate consideration given or paid for the same, unless the Governor-General in Council lawfully constituted for the purpose of making laws, shall by an Act declare that such pensions or gratuities or such Government Securities or the principal or interest thereof ought to be charged upon the taxes derived from the Income Tax or Trades License duties, either alone or jointly with the other revenues of India. I am ready to consider the question, whether the sum of two lakhs or £20,000 is too much or too little; but when the principle is determined, the Clause may be altered in that respect. The Clause provides that pensions, gratuities, or retiring or superannuation allowances, granted in pursuance of any law or of any general regulation now in force relating to pensions, gratuities, or superannuation allowances, are not to be deemed pensions or gratuities within the meaning of the Section. What I intend to strike at are grants in the nature of that made to the Mysore family. It may be said that this Clause, if carried, will throw some difficulty in the way of Government. I am willing to vote for taxes to meet the exigencies of the State, and the people are willing to pay them when they see that they are necessary. But I am not willing to tax incomes in this country down to £20 a year, when the stipends of men who have £720 a year, are unnecessarily increased to £1,200 a years. If the proposed check had existed last year, and the Secretary of State had known that the Income Tax would be stopped by the grant to the Mysore Princes, and that he would have to go to Parliament for a new loan to make good the deficiency, I believe he would have paused before he ordered that grant to be made. When we are told of the grandsons of Tippoo, with pensions of £720 a year, being in debt partly on account of the high price of provisions, and of giving out of the revenues a sum of £1,500 to each of these debtors to relieve him from his difficulties, and not only to him, but the same amount to every other grandson, whether in debt or not, it is unreasonable to expect us to pass such Acts as the Income Tax and the Bill now before the Council without opposition and without remark. It may be said that another such grant is not likely to be made; but whether so or not we ought to be jealous. Every legislator ought to be jealous when he is called upon to grant taxes or to give extraordinary powers, lest the taxes should be misapplied or the powers abused. It was to prevent the abuse of a Governor-General taking out a number of his friends and appointing them to offices in the Civil Service that a Clause was inserted the other day in the East India Civil Service Bill providing that the officers to be appointed under the provisions of the Act must have resided seven years in India. Yet no one supposes that a Governor-General would venture to do so. I, therefore, propose a check against lavish expenditure as long as these taxes are considered necessary. I feel that I should not be discharging my duty if I were to omit to do so. The check is that the Acts shall cease if extraordinary pensions above a certain amount shall be granted without an Act of the Governor-General in Council, declaring that they ought to be charged upon these taxes either alone or jointly with the other revenues of India. When I speak of an Act of the Governor-General in Council, I mean the Governor-General in Council competent to make laws for India. I wish to place the check in the hands of the Legislature of this country, and

Sir Barnes Peacock

to vest those, who for the time being may have the power of raising taxes in this country, with some check over the expenditure of them. Such taxes ought not to be raised except in cases of necessity, and when raised they ought to be used for the purpose for which they are granted.' The constitution of the legislative body for this country is about to be altered. In all probability this Council will shortly cease to exist, and I rejoice to see that non-officials are proposed to be introduced as Members into the Council which is to succeed us. There are many gentlemen amongst that class of the highest character and independence, men of ability, and men of experience. For my own part, I shall cheerfully resign the trust which has hitherto been committed to me, and shall look with confidence to those whom Parliament in its wisdom shall appoint to succeed us. This Council has been called a "Mock Parliament" and a "debating Society," and I have been charged with being the leader of the opposition. I care not for such charges. As long as I have the honor to hold a seat in this Council and am called upon to assist as a Member of the Legislature of the country, I shall, through good report and through evil report, pursue that course which I conscientiously believe to be right; and then, when the time arrives for relinquishing the trust, I shall have the consolation of knowing that I can lay my hand upon my heart and truly declare that I never gave a vote in this Council which I did not at the time believe to be just and correct.

With these observations I beg to move the introduction of the following Section:—

"Except so far as relates to arrears of duties or taxes or to offences committed or to acts previously done, the provisions of this Act and of Act XXXII of 1860, and of Act XXXIX of 1860, shall cease to have any force or effect, if at any time the revenues of India shall become chargeable with any new or extraordinary pensions or gratuities or with any increase of any extraordinary pensions or annuities granted in any one year or in any one period of twelve calendar months amounting in the whole to more than 200,000 Rupees or to £20,000 sterling, or with the payment of principal or interest on any Government Promissory Note or other Government Security issued after the passing of this Act and made payable to any person or persons by way of pension or gratuity or without adequate consideration given for or paid for the same by such person or persons, unless it shall be declared by an Act of the Governor-General in Council lawfully constituted for the purpose of making laws that such pension, gratuity, or annuity, or such Government security, or the principal or interest thereof, ought to be charged upon the taxes and duties levied under this Act or under Act XXXII of 1860 or Act XXXIX of 1860 either alone or jointly with the other revenues of India. Nothing in the foregoing Section shall extend to any pension or gratuity or retiring or superannuation allowance granted in pursuance of any law or of any general rule or regulation now in force relating to pensions, gratuities, or retiring or superannuation allowances."

SIR BARTLE FRERE said, he could safely say that he never rose in this Council with greater reluctance than he now did to reply to the Honorable and learned Chairman. He would gladly have remained silent regarding remarks which he had heard with unmitigated sorrow, because he believed the course adopted by the Honorable and learned gentleman was not calculated to give effect to the objects which he had in view—objects in which he (Sir Bartle Frere) entirely concurred with the Honorable and learned Chairman—objects which he thought were dear to all Members of this Council and to every one interested in the welfare of India and desirous of seeing the country well and economically governed—but objects which would not be gained and would most certainly be prejudiced by the course of conduct which we had this day witnessed. He felt, however, he should not be doing his duty without taking the earliest opportunity of making a few remarks upon some of the observations of the Honorable and learned Chairman. He would beg to call the attention of the Council to the distinction which, when these discussions first commenced, it was the endeavour of his Honorable colleague (Mr. Beadon) and himself to draw between the power of any individual Member of this Council to ask for any informa-

tion which he required from the records of Government for his own satisfaction—and the power of the Legislative Council in its collective capacity to pass resolutions requiring papers to be placed on its table with the almost necessary consequence that they should be made public. It was then pointed out by his Honorable colleague, in terms which he thought could not be mistaken, that we sat here representing the Governor-General in Council assembled for the purpose of making laws, and that any Member of this Council had the same power that the single Legislative Member had before this Council was constituted, to ask for any information which bore upon any subject of legislation which he had in hand; but that it was not competent to the Council in its collective capacity to pass resolutions calling for papers to be laid on its table and so made public. He thought that the wisdom of this distinction could hardly be doubted, if we considered what would be the result of the opposite course. It might happen that his Honorable and gallant friend (Sir Robert Napier) or himself might differ from a majority of the Governor-General's Council on what might be a most difficult and delicate point, on some diplomatic question, perhaps on a question of foreign policy, which it might be fatal to the interests of the country to make public, and yet it was contended that it ought to be in the power of any such Member of Government to come over to this Council and to obtain a resolution for placing the whole of the papers on the table of this Council. But whether this distinction between the power of individual Members to ask for information for their own satisfaction and the power of the Council to enforce the production of papers by a resolution in its collective capacity, was or was not clearly drawn in the case of the Mysore Grant, there could have been no doubt after the discussion about the Prison at the Neilgherries took place. He then stated, and it was not denied, that it was obviously not for the sake of information or for the personal satisfaction of any Member that that enquiry was made by his friend the Honorable and learned Judge opposite (Sir Charles Jackson), because we all saw that at the moment the Honorable and learned Judge knew more of the matter than any of us knew: and more than was on the records of the Government. It was then simply to ensure publication and to raise a public discussion that the enquiry was made, and he (Sir Bartle Frere) now referred to it only to show that the Government was not open to any charge of having unnecessarily withheld any information which any Member of this Council sought for to enable him to discharge his legislative duties conscientionsly and with satisfaction to himself.

With regard to that part of the Honorable and learned Chairman's speech in which he discussed the powers of this Council, the Honorable and learned Member spoke of the necessity of the Council having a control over the expenditure and not leaving it to others to spend the proceeds of the taxes which the Council had imposed, and that it was desirable to devise some means of controlling the repealing powers of the Home Government. He (Sir Bartle Frere) would not enter into any discussion on the abstract point as to how far the power of making laws could be pushed, or what was comprehended when the power of law-making was once given and used to its fullest extent and with all its possible consequences. But he would ask any Honorable Member present whether the powers which had been defined by the Honorable and learned Chairman, were not purely Executive powers. It might be quite proper that such powers should be exercised here. He (Sir Bartle Frere) did not pretend to discuss that question. But he would only remind the Honorable gentleman that they were, in practice, far in excess of the powers exercised by Parliament, and that the moment those powers were so transferred, this Council ceased to be a Council specially constituted for the purpose of making laws. It would exercise far more extensive Executive powers than the present,

Council of the Governor-General, which in that case must necessarily be absorbed in it and cease to exist.

It was not his purpose to follow the Honorable and learned Vice-President in discussing the Mysore Grant. But he could not admit that the Government was open to any charge of withholding any information which might have been expected in accordance with the promise contained in the message from the President in Council. If the Honorable and learned gentleman who had read so largely from the Parliamentary Blue Book had continued to read from where he stopped, he would have found the whole correspondence which had passed between the Government of India and the home authorities; and he would have seen that every Member of the Government of India had minuted against this Grant, and that if anything in the power of the Government of India could have stopped that Act, their unanimous opinion would have stopped it. He would have further seen that the whole case had been fully considered by the Secretary of State in Council and the Grant had been approved—the minority of the Council who dissented from this opinion, recording formal protests against it. All this had been laid before Parliament, and Parliament had not thought it necessary to interfere. In bowing, therefore, to the decision of the Secretary of State in Council, the Government of India only bowed to the decision of the supreme power which the Parliament of England had placed over them, and without whose sanction, as the Honorable and learned Vice-President well knew, the Government of India could not grant a single shilling as pension. He would ask, after this, what possible objection the Government of India could have had to the production of those papers? If the Honorable and learned Vice-President had reminded them that the information on this or any other point was still desired, or if he or any other Honorable Member would only have applied to the Secretary, he would have had the information in the fullest details. There was no desire or object for secresy, but so for as he (Sir Bartle Frere) could judge, he should have thought that the Parliamentary Blue Book would have been sufficient for all purposes. In declining earlier to state the views of the Government and the course they had taken, when the question was first discussed, Government had acted from precisely the same motives as the Honorable and learned Chairman, in abstaining from quoting his own Minute on the subject recorded some years previously. The papers had not reached the Secretary of State, or had not been replied to, and it would have been obviously improper under such circumstances to have given publicity to the views of Government or to any portion of an unfinished correspondence.

There was only one other point on which he would beg to make a few remarks. It was proposed to alter the limitation of this Act. He (Sir Bartle Frere) could not vote for the amendment proposed by the Honorable and learned Chairman. He should have preferred to pass the Act as the late Mr. Wilson had proposed, namely, as a permanent measure. But the Council had already decided that it should, like the Income Tax Act, be limited to five years. It was evident that, on the expiration of the period of limitation, the Legislative Council would have it in their power to consider the question of re-imposing it, and he thought that that was ample security for ensuring the Council an opportunity of seeing that the powers granted by the Act were not misapplied.

SIR CHARLES JACKSON said, he should support the amendment of the Honorable and learned Chairman inasmuch as, so far as he understood it, it proposed to prevent money raised from the tax-payers of this country from being squandered away without the acquiescence or even the knowledge of the Governor-General and this Council. Now the two questions to be considered were: 1*st*, whether, as the Honorable Member of Government who had just sat down had put it, this amendment involved an assumption by this Council of the

duties of the Executive Government; and *2ndly*, whether the amendment provided for too remote a probability. As he understood the amendment, it provided, whenever public money to a certain amount was granted away without any consideration, and the consent of the Governor-General in Council for the time being was not obtained to such grant, that then and from that time these tax Acts should absolutely cease and determine. Now, how could it be said that such provisions were an usurpation of the functions of the Executive? The amendment simply stated when and under what circumstances the operation of the Act should cease, which was strictly within our Legislative powers, and did not in any way interfere with any of the functions of the Executive Government. Then were we providing for too remote a contingency? The Honorable and learned Chairman had gone into the subject of the Mysore Grant, and he (Sir Charles Jackson) understood that the object of his doing so was to show that large sums of money had been squandered, without the knowledge of the Governor-General or this Council, by persons over whom neither the Council nor the Executive Government had any control. He had before him the Parliamentary papers relating to the Mysore Grant, but he should not follow the Honorable and learned Vice-President at any length in his examination of them, and would not do more than read one short passage from those papers. It was unnecessary to dwell on this part of the case, for it was clear from a perusal of the papers that he had the authority of the Governor-General in Council for saying that that was an unjustifiable grant. The perusal of these papers also showed, *1st*, that it was admitted by all parties and even the Secretary of State that the Mysore family had no legal claim; and, *2ndly*, that the supposed check of the British Parliament on the Secretary of State was not a sufficient protection for this country. It being admitted that the Mysore family had no legal claim whatever, then what did their case amount to? With that admission all arguments founded on the terms of the treaty, and the way in which the accounts of the assigned Districts had been separately kept, fell to the ground; and the question was reduced to one of mere generosity on the part of the Government. One would, under such circumstances, expect to find in these papers some statement showing how and in what respect this was a case for generosity, or some proof that the pensions previously granted to the Mysore family were insufficient for their support, or some other grounds for their relief. But, on the contrary, their poverty and the necessity for the grant were assumed throughout the papers. It was stated that some members of the family were poor; but we all knew very well that some were not, and that some of them were in fact the largest householders in the town of Calcutta. There was a total absence of enquiry as to how some of them were rich and others poor, none of them having entered into business to increase their means; and there seemed therefore no ground of compassion on which the grant could rest, and that being put aside, he could not understand on what principle it could be sustained. To show how generous people could be with other persons' money, he would read one passage from the Despatch of the Secretary, which would serve as an illustration of the style of reasoning throughout it. Sir Charles Wood observed:—

"The advantages of the scheme, both social and political, indeed, were so many and so great that, when I was apprised of Prince Gholam Mahomed's willingness, on the part of the family, to accept it, with certain supplementary arrangements, I thought it right to make some addition to the scheme, so as to ensure the accomplishment of the plan.

"Your Lordship will perceive that the mere capitalisation of existing stipends in whole or in part, for the benefit of posterity, would have been little inducement to present incumbents to accept the proposed terms; but coupling it with some immediate increase of those stipends for their lives—a boon which Prince Gholam Mahomed, whilst asking nothing for himself, earnestly solicited for them, on the score of the distressed condition of many members of the

Sir Charles Jackson

family—I had no doubt of the willingness of the principal Members to accept the proposal

"I therefore consented to raise the stipends of the grand-sons of Tippoo Sultan from £720 to £1,200 per annum, of which one-half was to be a personal allowance terminable with their lives, and the other half to be paid to them as interest on the capital stock funded for their families. At the same time I raised the stipends of the existing great grand-sons (being heads of families) from £240 to 360 per annum, of which one-third was to be considered as a personal allowance terminable with their lives."

Now, just apply that reasoning to an analogous case in England. Suppose any one of the noble families to whom Parliament had granted an amount of £2,000 a year for three generations. He would name one for the sake of perspicuity merely. Suppose the case of Lord Keane, whose next heir was provided for, but there was, of course, no provision for his remoter descendants. Suppose an English Minister were to tell Lord Keane that he intended to capitalize his £2,000 a year, so as to provide for his posterity for ever. He (Sir Charles Jackson) apprehended that His Lordship would think his lines had fallen in pleasant places; but how much more would he be astonished, and the House of Commons too, if the Minister told him that, by way of an inducement to him to accept his capitalization project, he would double his own annuity, or give him say £3,600 a year instead of £2,000, and that was in effect what the Secretary of State had done for the present Mysore annuitants. He could read other passages, but would not detain the Council longer, and would content himself with observing that the more he read the papers the more did the grant appear to be a wasteful expenditure. He therefore thought that it was perfectly justifiable in this Council, considering that it had in its keeping the interests of a large number of tax-payers, to attempt to contrive some check or control so as to prevent the recurrence of a similar grant. The principle of the amendment for which the Honorable and learned Chairman contended was, he thought, quite unobjectionable, and calculated to strengthen the hands of the Government of this country.

In conclusion, he would guard himself against a charge which had often been made, that this Council was assuming the functions of the House of Commons. On this occasion, at all events, they were doing no such thing, for not long hence this Council would cease to exist; and all its rights and privileges, such as they were, would be swept away, and the consent of the Legislative Council which would be hereafter in existence, and not of this Council, would have to be asked. With regard to the observation of the Honorable Member of Government that he could not be charged with withholding information, he (Sir Charles Jackson) would only say that personally we were all indebted to that Honorable Member for his uniform courtesy in giving the Council every information in his power. But that was not the point. As had been already said by the Honorable and learned Chairman, this Council had asked the President in Council for information as to this Mysore grant, and had received a very courteous answer, communicating a part of the information so called for, and stating that certain other papers would not be furnished because the correspondence was incomplete, and that the request of the Council with regard to other information would be referred to the Secretary of State. What they now meant to say was that the remaining information so withheld at that time had not yet been sent, and that message still remained in fact unanswered, and no one ever dreamt that any further notice or request of this Council was necessary to admit of its being sent.

MR. SETON-KARR said that he had come down to Council this day entirely unprepared for the important subject broached by the Honorable and learned Vice-President. He had, however, listened attentively to his able, manly, and eloquent exposition of the part he had played in the whole of the Mysore grant. No one who had heard it could doubt for a moment that the Honorable and learned Vice-President had acted throughout the whole affair with consistency, with truthfulness,

with justice, and even with leniency towards the Mysore Princes. He (Mr. Seton-Karr) sympathised with much that had fallen from the Honorable and learned Vice-President, and he had further listened to his full vindication of himself with lively interest and satisfaction. He had listened, too, with even greater pleasure to the Honorable and learned Vice-President's spirited defence of a deceased Nobleman, who was not more remarkable for his strong and even stern sense of justice, than he was for the wisdom of his measures, and the general vigor of his administration. But with all respect and sympathy, he did not think that the course recommended by the Honorable and learned Vice-President would attain the desired end, and it might cause greater evils. The Mysore grant and the License Tax were not practically connected at all. Moreover, the Government of India itself had protested against this grant, and acted in this matter so as to obtain the commendation and approval of all official and non-official men. The amendment looked to him like an attempt at a retaliation on an irresponsible authority 7,000 miles off, but in reality the blow would fall on the authorities here. Therefore, with such views, he should support the Government on this point. Indeed, any other course at this time of financial pressure might seriously hamper the Government, cramp its energies, contract its operations, and endanger its credit. Accordingly, without going into abstract questions of the power of the Council for which this was hardly the occasion, or without discussing the features of the Mysore grant which had been clearly and ably expounded by the learned Vice-President and the learned Judge on his right, he should support the original proposal, and give the Government his vote.

MR. ERSKINE said that, like the Honorable Member, who had just spoken, he had been quite unprepared for the important amendment which the Honorable and learned Chairman had moved. As, however, his (Mr. Erskine's) position in respect to the general question involved in that amendment was different from that of other Honorable Members, he must say a few words in explanation of the vote which he should feel it his duty to give. On a former occasion, during discussions to which the Honorable and learned Chairman had referred, he (Mr. Erskine) had expressed his opinion that a public duty lay on every Member of that Council to satisfy himself that the taxes which he was instrumental in imposing were not largely misapplied, either in India or in England. He still adhered entirely to those opinions. He did not think that, as Legislators, they could be relieved of the obligation he referred to, or that they could properly discharge their duties to the public under other conditions. He sympathised, therefore, with the anxiety of the Honorable and learned Chairman that some measures should be adopted to establish the authority of the Supreme Legislature in India to exercise a general control over the entire Indian Expenditure. But the amendment, now proposed, went beyond this, and proposed at once to determine what should hereafter be regarded as misapplications of the public revenues, and to provide that, in certain cases, a large portion of the public supplies should be stopped. He was not prepared to support such a proposal so made. As already stated, if the question now at issue—as to the right and duty of the Supreme Legislature to exercise some control over the public expenditure—had been brought forward as a separate question, in the form of a substantive Motion, or in any other form admitting of a mature consideration and discussion of the merits of the proposal in the usual manner in all its bearings, he (Mr. Erskine)—as he entered fully into the views of those who wished to see this control established—would have done his best to support their endeavors in as far as the particular proposals seemed judicious. But now it was proposed suddenly to insert in an important money Bill, in one of its later stages, a Section, the *effect* of which could not but be to prevent the final passing of that Bill altogether;

and the *object* of which was, on the occurrence of certain contingencies—which might not depend on the action of the Government in India—to suspend one productive tax which had been in operation for a year, and another tax not less important, the principles of which had been so often considered and sanctioned in the Council that the Government might well regard them as pledged to its passing. Whatever his general views therefore as to the control of public expenditure might be, he could not support such an amendment introduced in this way, by which they would unsettle a large portion of the revenues required for the public service in a time of financial pressure, and so weaken the general administration of the country. It did not appear to him that that course was recommended by considerations either of prudence or of public spirit. There were two considerations only, which it seemed to him would now justify an interference with the main provisions of this Bill; one was, if it should appear that the Government was mistaken in believing that the revenue to be raised by it was required for public uses, and the other was, if it should appear that the requisite amount of revenue could be more advantageously obtained by other means. Neither of these arguments had even been urged in the course of this discussion, and he felt it impossible therefore to give his support to the amendment, but should, on the contrary, support the Bill as it originally stood.

SIR BARTLE FRERE said, he desired to say a few words in explanation before the Council divided, as to the powers which the Honorable and learned Chief Justice wished to exercise, being, in fact, executive powers and far beyond those exercised by any legislative body. He did not mean to say that there should be no check to any waste of public money, but that the remedy proposed for the evil was one which went far beyond any that it was in the power of this Council to entertain. He would ask, by what legal right did the Crown rule in India? He presumed by Act of Parliament. He would ask, by what legal right did we sit here? He presumed by Act of Parliament. He would ask, by what legal right did the Secretary of State in Council direct and control the expenditure of public money in India? He presumed by Act of Parliament; and he conceived that any attempt to limit this power was in opposition to that Act. He did not discuss whether it was right or wrong to limit that power. He only meant to say that to do so was entirely beyond our power.

With regard to what had fallen from his Honorable and learned friend opposite (Sir Charles Jackson), he would only observe that if his Honorable and gallant Colleague (Sir Robert Napier), or himself, wished to know any thing of the proceedings of the Executive Government in a case which they had not previously seen, what course did they pursue? They did not move a Resolution of Government calling for the production of the papers. The papers were open to them, and they would go and ask for them in the proper Department. Honorable Members of this Council were at liberty to ask for information in a similar way; and if any Member could say that he had asked for information in that manner, and had been refused the information he required, then he (Sir Bartle Frere) must confess he was mistaken. Till then he must maintain that no case had been made out for such a proceeding as asking for papers by a vote of the Council in its collective capacity.

SIR ROBERT NAPIER said that, as far as he understood the constitution of the Council, it was a branch of the Government placed there especially to make laws, and it had nothing to do with the execution of them. If, therefore, it should "refuse supplies" in order to effect or prevent any particular measures, it would usurp a power not vested in it by the State.

THE CHAIRMAN said, he was afraid he had been misunderstood in his observations as intending to cast blame upon the Executive Government of this country. It was far from his intention to blame the Government of

India either for refusing the information asked for in December last, or to impute any blame to the Government of India in regard to the grant to the Mysore Family. He knew that the Governor General and every Member of his Council had acted nobly in this matter, and had strongly protested against the grant. He had been told that, if he wanted the information, he might have gone to the Office and asked the Secretary to Government who would have given it. But how could he have done so? The Council had been told that the papers specified in the Resolution related to a correspondence with the Secretary of State for India which was then incomplete; that the President in Council did not therefore feel that he would be justified in transmitting them to the Legislative Council; but that the request of the Legislative Council would at once be made known to the Secretary of State. At that time the correspondence was not complete, and it was not considered proper by the President in Council to communicate it to this Council.

SIR BARTLE FRERE explained that that was with reference to the motion to lay the papers upon the table of this Council—not as regards any information which individual Members might wish to have.

THE CHAIRMAN proceeded—Could he with any degree of honor or propriety have gone to any of the Secretaries to Government and asked for the information after that reply of the President in Council? He was not a Member of the Executive Government. He was only a Member of the Legislative Council, and this was the only place in which he could properly ask for the information. Suppose this Council had been sitting with closed doors, and he had asked for information which the Executive Government thought they could not give, could he have gone to the Secretary and asked him for the information? Or even if he could have made up his mind to do so, would the Secretary have been justified in giving the information? The fact that this Council did not sit with closed doors could not make any difference in principle. Before, however, the answer of the Secretary of State arrived, this Council was now called upon to pass this Bill.

SIR BARTLE FRERE begged to explain that he did not intend that the information should be obtained in any secret or under-hand manner. He meant simply that the Honorable and learned Vice-President should have gone and asked the Secretary for the information in the same way as his Honorable and gallant friend (Sir Robert Napier) or himself would go. He thought that he had clearly drawn the distinction between an application by an individual Member of this Council for information required by him for his own satisfaction, and an application by the Council collectively calling for papers for the purpose of being made public.

THE CHAIRMAN resumed. He did not understood the Honorable Member to say that he (Sir Barnes Peacock) ought to have gone to the Secretary and obtained the information in a secret or under-hand manner. But the Secretary to the Government of India in the Home or Foreign Department was not the Secretary to the Legislative Council, and would not be justified in giving him the information without the consent of the Governor-General in Council. He had asked the Governor-General in Council, or rather the President in Council during the absence of the Governor General from the Presidency, for the information and it had been refused. We all knew that questions were determined by a majority of votes, and that in this Council every Member had a vote. He had no vote however in the Executive Council, and no control over the papers either in the Financial or Foreign Departments, or in any Department except the Legislative, and if he had gone to the Secretary and asked for the information, the information ought properly to have been refused by the Secretary, and he could not have gone farther.

But the Honorable Member had asked by what right did we sit here, and by what right did the Governor

General in Council act in his Executive capacity? It was true that this Council sat by Act of Parliament and only for the purpose of making Laws and Regulations For the last two years, the Financial Member of Government (and this was a new appointment) had made a Financial Statement in order that this Council might know the state of the finances of the country. We had been told by the late Mr. Wilson in 1860 that there was a large deficit, and we were called upon to pass taxes beyond what were called the ordinary taxes. He said that the ordinary revenues were not sufficient to meet the expenditure of the country, and asked us to pass laws imposing new taxes to enable the Government to meet the expenditure. Supposing the Right Honorable gentleman had said, "There is a deficiency of £500,000 and I ask you to pass a particular tax to meet it." Suppose every Honorable Member of this Council, anxious to relieve the State in its necessities, had agreed to the passing of the Act under the impression that it would enable the Government to meet the deficiency. But suppose that, when the taxes had been collected, we had been told that the Secretary of State had granted a gratuity of £500,000 to the Mysore Family, and had expended the whole of the money raised by the new tax in paying it; or that the gratuity had been paid out of the ordinary revenues; and that, therefore, with the aid of the new tax, there was still the same deficit of £500,000 to be made good, and that we were in the same position as we were when the new tax was granted. Suppose that, after this, the Council had been asked to pass another Bill to raise £500,000 more to meet the deficit. Would any one contend for a moment that the Council ought to have passed the new Bill without further enquiries, without comment, and without endeavoring to prevent the new tax from being applied to discharge another gratuity of the same nature? It made no difference in principle whether the sum to be raised was small or large, or whether it was precisely of the same amount as that of the deficit to be cleared off or not. If Mr. Wilson had asked for an income tax to raise £500,000 to pay the Mysore grant, he (Sir Barnes Peacock) for one should have voted against the Bill. Were we not then justified in saying, "If you choose to make these grants, don't ask us to pass laws imposing new taxes to meet them?" Though the Secretary of State in Council might have the power to grant new stipends, he could not order us to vote for taxes to pay them. He did not ask this Council to control the Executive Government. But when the ordinary revenues of the State were insufficient to meet the ordinary expenses, he thought that they ought not to be burthened with the payment of new and unnecessary stipends. He did not think it consistent to raise extraordinary taxes, whilst voluntary grants were made to which they must indirectly be applied. If such new grants were to be made let the taxes cease. When we found that such extraordinary grants could be made without consulting the authorities in this country, it behoved us to provide that the taxes should cease if any such grants should be made beyond a certain amount without the consent of the Governor General in Council in his Legislative capacity, whatever the constitution of that Council might be.

He would rather leave it to the Governor General in his Executive Council than have no check at all. But if there was to be any check in this country in which the taxes were passed, he thought it ought to be in the Legislature of this country for the time being, that is, with the Governor General in a Council so constituted as to have authority to make laws. He thought this Council had a right to say, "If you make such grants as these, you must raise the money in some other way to meet them. We do not think it right or consistent to raise money for the purpose by extraordinary taxes upon the people."

SIR ROBERT NAPIER observed that it was with much diffidence that he opposed the opinion of the Honorable

and learned Vice-President, but that he considered the view entertained by him to be incorrect. The Council was placed there to make laws, and to see that they were just laws suited to the people, and that the people could bear them. If the tax-payers objected to the way in which the taxes were spent, they could assemble and address the Government, and it would be the duty of the Council to support their petition with all the weight it might deserve. But if the Council could interfere in any question relating to the grant of pensions, it might as well control the Military or Civil expenditure. It seemed to him that it was beyond the power of the Council to say, "We will not pass this law because you will not promise not to spend it in a particular way." If the Council were a representative body, then he (Sir Robert Napier) would go heart and soul with the Honorable and learned Vice-President in endeavouring to control the expenditure. But it was not a representative body; it was placed there for a special purpose, and had no power to go beyond it.

THE CHAIRMAN said, he was much indebted to the Honorable and gallant Member for the manner in which he had explained his views. He (Sir Barnes Peacock) desired to observe that by pensions he did not mean ordinary pensions to Civil or Military Officers, for he had in his amendments introduced a proviso to that effect. The proviso enacted that "nothing in the foregoing Section shall extend to any pension or gratuity, or retiring or superannuation allowance granted in pursuance of any law or of any general rule or regulation now in force relating to pensions, gratuities, or retiring or superannuation allowances." Therefore, superannuation allowances granted by virtue of any law would not fall within this Clause. The Clause would only prevent new and extraordinary pensions in the nature of that granted to the Mysore Princes, and which we now found had been ordered by the Secretary of State to be made contrary to the opinions of three Members of his Council in England, and which would have been contrary to the unanimous view of the Government of India in this country if they had been previously consulted upon the subject.

The question being then put, the Council divided—

Ayes 2.	*Noes* 5.
Sir Charles Jackson.	Mr. Seton-Karr.
The Chairman.	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	Sir Bartle Frere.

So the Motion was negatived.

The rest of the amendments were then put and carried; and the Council having resumed its sitting, the Bill was reported.

Sir Bartle Frere moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

PAPER CURRENCY.

The Order of the Day being read for the third reading of the Bill "to provide for a Government Paper Currency"—

SIR BARTLE FRERE moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering the amendments of which he had given notice, and which had been circulated to the Members.

Agreed to.

SIR BARTLE FRERE moved the substitution of "five Rupees" for "ten Rupees" in Section III, as the lowest denomination of Notes. He said: This question has been so often discussed that, in moving this Amendment, I will but very briefly advert to the arguments in favor of empowering the Government to issue Notes of so low a denomination as five Rupees. It is to be borne in mind that the time of issuing and the amount of such Notes to be issued will be left, as in the case of all other Notes, to the discretion of Government, and that it will be their interest, no less than their duty, to take every care that their arrangements regarding them shall be such as to

render the Notes as popular as possible, and to prevent loss or inconvenience to the public. They will be, like all other Notes, a legal tender, and will have this advantage over Notes of higher denomination, that for one man who has to pay a debt to his neighbour, or a Tax to his Government amounting to ten Rupees, there are scores who have to pay a debt or a Tax of five Rupees. Much stress has been laid on the necessity for securing the convertibility of Notes within easy reach of all holders. But I submit that if every holder of these Notes can find in every village in the country a man who wants Notes to pay his debts or his Taxes—even if he have himself no debts or Taxes to pay—he is less likely to lose by his Notes than if there were Offices for cashing Notes at every Police Thannah in the country. It cannot be many weeks after such Notes appear in the country before the most ignorant peasant discovers that they are just as available and more convenient than silver rupees, that his zemindar or mahajaun is obliged to take them just as he would rupees, while the zemindar and mahajaun will discover the many additional advantages which paper possesses in the smaller bulk and greater security against loss by theft.

I submit that as long as they are a legal tender, and as long as almost every man in the country is either a borrower or a lender, and the great bulk of the population are Tax-payers to Government in one form or another, it is next to impossible that the holder of a five Rupees note should find himself worse off than the holder of five Rupees in cash.

If he has to pay a small premium for changing his note into smaller coin, he is not worse off than the holder of the silver rupee, who must pay a premium to the shroff who changes his Rupees into pice or cowries. No employer can inflict an unlooked for loss on him by paying him twice in a depreciated currency; for if the laborer once suffer by such injustice, he will make his own terms as to the currency in which he will be paid, and the obvious certainty that the injustice would thus recoil on his own head will deter the most short-sighted employers of labor from making the attempt.

It is I believe very generally the wish of the mercantile community to have notes of this denomination.

As compared with England or Scotland, five rupees is, it must be remembered, the full month's wages of an able bodied laborer, and is therefore more nearly analogous to a £5 than to a £1 Note or Sovereign in England.

For all these reasons I think it very desirable to fix five Rupees as the lowest limit of the Notes to be issued rather than ten Rupees.

MR. FORBES said: When this Bill was before the Council for a second reading, I stated some objections which I had to some of its details, and particularly to notes of a small amount being made a legal tender. I maintained the same view as a Member of the Select Committee on the Bill; and when the Bill was in Committee of the whole Council, I did not vote in the division which took place on the question of whether the issue of ten Rupees notes should form part of the Bill, only because my absence from Calcutta prevented my being present at the Debate. Had I been present, the question would probably have been lost, as my vote would have made an equal division, and it may be assumed that the Vice-President's casting vote would then have been given on the same side as his original vote. Since the second reading, since the Select Committee sat, and since the Debate in Committee of the whole Council, I have heard nothing which has induced me to change the opinion I had formed of the extreme impolicy of introducing a Paper Currency of a very low value, and as a legal tender, over the length and breadth of India, and I shall not be able to support the Honorable Gentleman who has moved the present amendment. The general question of the policy of a small Paper Currency declared to be a legal tender, has been now so often and so fully discussed in this assembly, that there is little new left to be said; but policy and impo-

licy, as if the question were merely a financial one, seem to me to be hardly the terms to be used, and I cannot but take a wider view of the question, and say that it appears to me to be little short of cruelty to force on the poorer classes of this country by law a Currency which must, in practice, entail upon them constant and serious pecuniary losses. When I talk of forcing this Currency on the country, I would not be misunderstood. I know that the Government have no wish to force it, and no intention of doing so. I know that they have given an assurance that they will proceed tentatively, and I quite confide in that assurance; but I say that, when once this small Paper Currency is made a legal tender, the Government will lose all command over it, and that although they may not be willing to force it, others will be able to do so in spite of them. Great Railway Companies, Great Coal Companies, or Great Tea Companies may obtain any number of five Rupees notes from the Office of issue, and pay their laborers with them month after month, and this would force the small Paper Currency on the country as fully and effectually as it could be forced by the Government. Sitting in this Council, acquainted with India and with long experience of the ways and means and habits and customs of the people, we cannot contract our view of the question to the limit in which it may appear to any one resident in England, and surrounded by, and accustomed to, all the accessories of a more perfect monetary system; we must look at the question as it will affect our own people, and consider what will be the result to the millions of our laborers, the millions of our peasantry, and the millions of our artizans, to all of whom a small sum of money is great riches, what, I say, will be the result to them of forcing on their acceptance, a Paper Currency convertible only at distances of hundreds, and it may be of thousands of miles.

I have heard it argued that, considering the difference in the value of money, a five Rupees bank note in India not would be so small a Currency as a £1 note is in Scotland, and that as there is no objection made to the £1 notes in Scotland, so there need be none to the five Rupees notes in India. But the class of persons among whom each of those notes would circulate are very widely different. In Great Britain the wages of laborers and of artizans are paid weekly, and as no laborers and few artizans earn £1 a week, they can never be paid in paper; but in India wages are all paid monthly, and many a laborer and many an artizan earns five Rupees a month, and will be paid, if the amendment be adopted, in paper. Now how does our experience tell us, that a native of the poorer classes keeps his money? He either ties it in a corner of his cloth or buries it in the floor of his house. In the one case a shower of rain would reduce his month's wages to a useless pulp, and in the other the white ants would destroy it; and it is this that led me to say just now that a five Rupees paper legal tender would be more justly called a cruel than merely impolitic measure. If the poorer classes were to try to keep their Paper money, they would be pretty sure by some accident to lose it; and if they attempted to change it, as from the fear of loss they certainly would, advantage would be taken of their anxiety to be freed from so fugitive a treasure, and a heavy discount would be exacted, so that, take the question in what way we will, it seems to me that a heavy loss must fall on the poorer classes by paper legal tender of small value.

It may possibly be asked, whether my objections to this measure would be removed if these small notes were introduced and not made a legal tender. This would certainly diminish my objections, although it would certainly not remove them. If the question were regarding notes of larger amount, my objections would be wholly removed, because they would circulate only amongst the better classes, whose intelligence would enable them to discern between what was, and what was not a legal tender. But the question assumes a different aspect when it regards notes of very small amount which would circulate

among the poorer classes who would not be able to discern between one note that was a legal tender, and another note that was not a legal tender. Therefore, although I should prefer a small note that was not a legal tender to one that was, I should prefer to either to have no very small note at all.

When I spoke upon this question at the second reading of the Bill, I endeavored to show the extreme inconvenience that would arise from the great size of some of the circles of issue—a size so great that, in one instance which I particularized, a note could be cashed at par at the Office of issue only by undertaking a journey out and home of 1,400 miles. I have heard nothing since of any disposition to reduce the size of those circles. On the contrary, I have heard it hinted—on second hand authority, it is true, but I have heard it hinted—that it is in the contemplation of the Honorable Gentleman who superintends the Finances of the empire, to limit the circles to one for each Presidency, If there be any thing of this sort in contemplation, I think that it very greatly strengthens all arguments against a five Rupees paper legal tender, and the impossibility of any one at Peshawur or Lahore, or even at Delhi or Mirzapore, obtaining cash at par for a note at the Presidency office of issue, is so manifest that we cannot doubt that the rates of discount would be terribly raised on the unfortunate holders of paper—a discount which would fall with terrible severity on the poorer classes, whose whole monthly income would be included in one five Rupees note.

I observe from our printed Proceedings, for I was not present myself, that the former lowest denomination of note was changed from twenty Rupees to ten Rupees at the desire of the mercantile community who were unwilling to part with the convenience they now have in a ten Rupees note. But we have no request made to us now by any community or any person to legalize a five Rupees note, nor will our omission to do so withdraw any convenience now enjoyed by the public. On all the grounds which I have stated, and others which I do not refer to because they have been already stated at length in former Debates and need not now be repeated, I shall vote against the amendment.

MR. HARINGTON said, he entirely concurred in all that had fallen from the Honorable Member for Madras, and with that Honorable Member he should consider it to be his duty to vote against the amendment which had been proposed for their adoption. He should not have deemed it necessary to address the Committee after what had been said by the Honorable Member for Madras with whom he fully agreed as regarded the objections urged by him to the proposed amendment, but he wished particularly to notice that part of the remarks of the Honorable Member of the Government (Sir Bartle Frere) in which he said he understood there was a very general desire for Bank Notes of the value of five Rupees. He thought that the Honorable Member must have been misinformed, and in proof that such was the case, he, too, would refer, as the Honorable Member for Madras had done, to the Petitions presented to the Council by the Calcutta Chamber of Commerce and the Trades' Association, reminding the Committee that these Petitions were given in after it was known that the Select Committee, to which the Bill was referred for report, had recommended that notes of a lower denomination than twenty Rupees should not be issued. The Petitioners took no objection to the reasons upon which this recommendation was based, in so far as notes of the value of five Rupees were concerned, and it might be inferred that they admitted their force as respected notes of that denomination; but they urged that those reasons did not apply to notes of the value of ten Rupees, and adverting to the fact that the Presidency Towns had long enjoyed the use of notes of that value, they pressed upon the Council the great inconvenience which would be experienced in the Presidency Towns if these notes were withdrawn from circulation and no

notes of the same denomination substituted for them in the new Bill. It was chiefly in consequence of what was stated by the Petitioners that the Council yielded the point, and agreed to reduce the lowest denomination of notes to be issued under the Bill from twenty to ten Rupees. The Petitioners did not ask for notes of the value of five Rupees, though they must have been aware that the Bill, as it was originally drawn and introduced, included notes of that value. They merely asked to be allowed to retain what they had already got, namely, notes of the value of ten Rupees, and, as already mentioned, the Council assented to the prayer of their Petition. It was only yesterday that he was talking to one of the first merchants in Calcutta on the subject, and from what fell from that gentleman, he gathered that the Calcutta community were quite content with the Bill as it stood—he meant as regarded the lowest denomination of notes to be issued under it—and that they desired no change in this respect. The Section, as it now appeared, was settled after full consideration and discussion, and he could see no sufficient reason for altering it or disturbing the decision formerly come to.

Mr. SETON-KARR said that he concurred, on the whole, in what had been stated by the Honorable Members for Madras and the North-Western Provinces. We had to introduce a kind of Currency liable to injury from fire, damp, insects, and climate. We had to encounter and to surmount the credulity of the natives, their aptitude to distrust the motives of the Government, the possibility of evasion, and a sheer inability to understand that a dirty piece of paper really did represent five Rupees worth of good sterling coin of the realm. Moreover, it was impossible not to read Sections 8 and 16 of the Bill together; the one ruling that these notes would only be cashed at certain Agencies or Offices of issue, and the other declaring emphatically that these notes were legal tender when offered by Government, by any Company, by any Society, or Railway contractors, or private individuals, on any occasion when any money payment could by any possibility be made. If this were the case, and five Rupees notes were introduced, then the consequence would be, either that the poor men would resort to the nearest money lender in the bazar and pay discount for their silver just as they had paid discount when requiring copper for silver; or else the Zemindars and great Mahajuns would derive a regular and profitable trade by cashing these notes, when presented by the poor people, for a certain consideration. It had further been brought to his notice by a gentleman of intimate practical knowledge of mercantile and monetary matters, that, just one hundred years ago, it had been found necessary in Scotland to abolish the use of notes of twenty shillings on account of the intolerable hardship which they inflicted on the people. Now, granting that in diversity of interests, mercantile enterprize, and in a certain kind of civilization, Bengal was now ahead of the Scotland of a hundred years ago, still he thought that ten Rupees was a limit beneath which it was not right or safe to go. We had to overcome distrust or the possibility of evasion or panic, and to take heed that we did not inflict serious distress and loss on the poor; and in this view, looking to all the reasons adduced and to the arguments on both sides, the amendment proposed by the Honorable Member of Government was no-one to which he could give his support.

Mr. ERSKINE said, he had only a very few words to say in regard to this amendment. From the first occasion on which this question had come before the Council, it had appeared to him that the limit of ten Rupees was as good a minimum denomination of notes as the Council could adopt in the outset. One strong argument at least in its favor was that it would leave the classes of notes as they now were. For his own part he did not share in the apprehensions expressed by the Honorable Members for Madras and Bengal, that large contractors and other employers of labor would force smaller notes on their workmen against their will; for he could hardly con-

ceive that any one would have a more direct interest than these large employers of labor in making their payments as acceptable as possible to those whom they employed; or, in other words, in making their payments in the form in which they could most easily and cheaply satisfy their workmen. At the same time, no doubt, it must not be forgotten that the prejudices and suspicion of the people in the interior might be excited by anything that could be represented to them as an attempt to force upon them new kinds of notes under the auspices of Government. Although, therefore, in a merely monetary point of view the introduction of the smaller notes might be desirable and convenient; still, since the Count cil could not regard the question solely in its monetary aspect, but must feel their way cautiously with this measure; and since it would be easy, as the Honorable Member for Bengal had observed, to make provision for the issue of notes of a lower denomination than ten Rupees hereafter, if experience should prove that such a step might safely be taken and was required to meet a real and felt want; he thought it right to support the Bill as it stood, and to object to the amendment; especially as the limit already adopted had been agreed upon deliberately by the Council after the fullest discussion.

SIR CHARLES JACKSON said, he must also vote against this amendment, although he felt it was not very easy to reconcile such a vote with principle. Applying the ordinary principles of political economy to the question, one would say that; if a servant or cooly experienced any difficulty in getting his five Rupees note cashed, he would indemnify himself by asking for an increase of wages. That would be the result in England, no doubt; but still we ought not to ride principles to death, and fancy that, because a principle was sound in Europe, it might be safely acted on in a country like this. We were legislating for persons in an uncivilized condition; and, judging from his experience, he was not satisfied that the relation of master and servant, or ryot and planter in the Mofussil, was such that the ryot and the servant were in a position to fight their own battle, and compensate themselves by a demand for an increase of wages. He must say that his objection would be removed if these five Rupee notes could be made payable at the Deputy Collectorates; but he supposed that any arrangement of that kind on the part of Government was practically impossible. Something had been said, in a Despatch we had all read, about the Scotch notes. The reasoning employed in that Despatch was that, because £1 notes had not been found inconvenient in Scotland, therefore a note which, looking to the different circumstances of this country, would be equivalent to a £1 note—say five Rupees—would not be found inconvenient in this country. He must say that that was a very narrow argument, and could only have been raised by a person resident at home. In Scotland a £1 note was gladly taken whenever presented, and cashed without discount, but that would not be the case here. It had been said that these five Rupee notes were much desired by the commercial classes. He must say he was surprised to hear it, for a gentleman who conducted one of the largest Banking establishments in this place, and who had been sitting on the Visitor's bench all the morning, had told him just before he left that five Rupee notes were not required at all.

THE CHAIRMAN said, he entirely agreed with what had fallen from the Honorable Members who had preceded him in the debate on this Motion. He would make only one or two observations with regard to £1 Bank Notes in Ireland and Scotland. We must bear in mind that those Notes in Ireland and Scotland were not a legal tender; every one had an option to take or refuse them. When the late Mr. Wilson brought forward this measure, he fairly told us that Bank Notes below £5 were not legal tender. He had seen an opinion in which a 10 Rupee Note in this country had been compared with a Sovereign which

was said to be the lowest gold coin in England. He could not understand how there could be any comparison between a 10 Rupee Note and a Sovereign. A Sovereign was bullion and the current gold coin of the country, and how it could be compared with a Paper Currency was a matter which he must say he was quite at a loss to comprehend. We had been memorialized by the Bengal Chamber of Commerce to reduce the limit of 20 Rs. to 10 Rs. and that had been done. He did not therefore wish to undo it. But he did object to reducing the limit to 5 Rs, when the distances, within which they could be cashed without paying a discount, was so great. It had occurred to him whether 5 Rupee Notes might not be issued if not declared to be a legal tender. But he thought that it could not be done in this country, whilst you had Notes of a different denomination which were a legal tender ; for if you had 10 Rupee Notes a legal tender and 5 Rupee Notes not a legal tender, it would be a long time before the poorer classes would understand which were a legal tender and which were not.

SIR BARTLE FRERE said, he was afraid there was very little use in replying to the arguments used against the amendment proposed by him. But as his Honorable friend the Member for Madras seemed to think that there was no answer to the objection made by him of the difficulty that would be felt by a man who would be obliged to travel 1,400 miles before he could have his note changed, he would beg to remind him that there was hardly a village in any part of Madras where persons were not paying taxes to Government, the greater part of them in sums considerably above five Rupees. There could be no doubt, therefore, that the holder of the note would find some person in his own immediate neighborhood who had to pay taxes and would much rather pay them in a bit of paper than in the shape of silver. A good deal had been said by way of objection of the notes being eaten up by white ants or destroyed by the damp and rain. But he thought that something ought to be said *per contra* as to its advantages. It was very much easier for a laborer to tie up ten or twenty Rupees in that way, and it would be far more secure from robbers ; and if he would take the precaution of getting the village writer to write down the number of his note, he could stop payment of it in the event of its being lost. Employers would be certain to use that Currency which was the most advantageous. If Paper Money made its way and became popular, they would pay in Paper Money. But it was quite impossible to attempt to force the notes on the laborers. The first time the attempt was made, the laborer would be sure to make his own terms as to his future mode of payment. He (Sir Bartle Frere) had commenced by saying that he could not deny that a man would probably have to pay something in the shape of discount for getting his notes changed into Rupees. But he would have to do the same thing in changing his Rupees into pice and his pice into cowries. With regard to making these notes legal tender, he considered that that was the great security of a poor man, and he should certainly object, unless they were made a legal tender, to issue notes of so low a denomination as five Rupees. The example in Scotland and Ireland was favorable to the view which he had taken. There the £1 notes had made their way from their intrinsic convenience, and if the five Rupees notes were introduced into this country, he was sure that they would in a very short time be found to be far more advantageous to the poorer classes than to any others.

The question being put, the Council divided.

Ayes 2.	*Noes* 6.
Sir Robert Napier.	Mr. Seton-Karr.
Sir Bartle Frere.	Sir Charles Jackson.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the Motion was negatived.

The rest of the amendments were then put and carried ; and the Council having resumed its sitting, the Bill was reported.

SIR BARTLE FRERE moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

Adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to Trespasses by Cattle)."

EMIGRATION (SEYCHELLES).

MR. FORBES moved that the Bill "relating to emigration to the British Colonial Dependency of Seychelles" be referred to a Select Committee consisting of Mr. Harington, Mr. Seton-Karr, and the Mover.

Agreed to.

BRANCH RAILWAYS, &c.

MR. SETON-KARR moved that the Bill "to provide for the construction, by Companies and by private persons, of Branch Railways, Iron Tram Roads, common Roads, or Canals, as feeders to Public Railways" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Sir Charles Jackson, and the Mover.

Agreed to.

RECOVERY OF RENT (BENGAL.)

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the select Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)."

Agreed to.

INCOME TAX.

SIR BARTLE FRERE gave notice that he would on Saturday next move the second reading of the Bill to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices.)

LICENSING OF ARTS, TRADES, AND DEALINGS.

SIR BARTLE FRERE moved that Sir Robert Napier be requested to take the Bill "for imposing a Duty on Arts, Trades, and Dealings" to the Governor-General for his assent.

Agreed to.

PAPER CURRENCY.

SIR BARTLE FRERE moved that Sir Robert Napier be requested to take the Bill "to provide for a Government Paper Currency" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, July 20, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President,* n the Chair.

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

LICENSING OF ARTS, TRADES, AND DEALINGS ; AND PAPER CURRENCY.

THE VICE-PRESIDENT read Messages from the Right Honorable the Governor-General, communicating his assent to the Bill "for imposing a Duty on Arts, Trades, and Dealings,"

and the Bill "to provide for a Government Paper Currency."

SALTPETRE.

THE CLERK presented a Petition from certain Saltpetre Merchants of Delhi against the levy of a tax on Indian Saltpetre.

MR. HARINGTON moved that the Petition be printed and referred to the Select Committee on the Bill "to regulate the manufacture of Saltpetre and of Salt educed therefrom."

Agreed to.

COURTS OF CIVIL JUDICATURE.

THE CLERK reported to the Council that he had received a communication from the Home Department forwarding for consideration, in connection with the Bill for constituting Courts of Civil Judicature, copies of two Despatches from the Secretary of State relative to the institution of Civil suits under Section 6 Act VIII of 1859, the expediency of abolishing the grade of Sudder Ameen in the Bombay Presidency, and the necessity of adopting some general and comprehensive measure in regard to the Courts in the three Presidencies presided over by Uncovenanted Judges.

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

PENAL CODE AND CRIMINAL PROCEDURE.

THE CLERK also reported a communication from the Home Department, forwarding a Despatch from the Secretary of State, communicating remarks regarding the postponement of the introduction of the Penal Code, and expressing a hope that every exertion will be made with the view of expediting the progress of the Code of Criminal Procedure now under the consideration of the Council.

SIR BARTLE FRERE moved that the communication be read when the Council went into Committee on the Criminal Procedure Bill.

Agreed to.

SALTPETRE.

THE CLERK also reported a communication from the Government of the North-Western Provinces, relative to the Bill "to regulate the manufacture of Saltpetre and of Salt educed therefrom."

MR. HARINGTON moved, that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR moved the first reading of a Bill "for the better enforcement of discipline in the House of Correction at Calcutta."

He said :—

Sir, it will be in the recollection of Honorable Members that, in the spring of this year, a very serious outbreak took place in the House of Correction, in which several prisoners, after violent and mutinous conduct inside the Jail, effected their escape, and caused the death of a native policeman in the exercise of his duty.

The papers relating to the enquiries which took place after the outbreak, will be found in the annexure to this Bill.

As may be conceived, the Advocate General was called on for his opinion, and it appears that not only is the law deficient, but that there is no proper controlling authority to provide for the due discipline and regularity of the Jail. The nominal authority resides in the Sheriff, but, practically, the superintendence is left to the Commissioner of Police, who, however, has not the legal power to inflict all the necessary punishments. All that he can do, is to put men in irons when an outbreak is actually imminent, but he has not the power sufficient to deal with ordinary breaches of discipline. This is a state of things which it is necessary should be at once remedied.

It appears further that there are two laws applicable to Jail discipline,

namely, Act XVI of 1840 and Act XXIII of 1854. The first empowers the Governor-General in Council to frame Rules regarding transported convicts, and the second empowers the same high authority to detain persons sentenced to penal servitude in any place that may appear advisable. But neither singly nor together is it possible to work these laws so as to obtain the desired end. They will not apply to persons sentenced to penal servitude, but detained in the House of Correction as an immediate place of confinement; nor to persons sentenced to penal servitude by a Court Martial; nor to persons sentenced to imprisonment with or without hard labour; nor to persons awaiting their trial.

Sir, it is now proposed to vest the control of the House of Correction in the hands of one person who shall be either the Commissioner of Police or some person whom Government may appoint.

In this view the powers of the Chief Commissioners are strictly defined, and we propose by law to empower him to punish persons guilty of mutinous or violent conduct, or of insolent language, or prisoners who contumaciously refuse to perform the work allotted to them, by solitary confinement for a period of three days, or by separate confinement for not more than seven days, or by placing them in irons for not more than four days, in each particular instance.

Still further to ensure order, it is proposed to empower the Government, from time to time, to frame rules for the ordinary discipline of the jail, embracing the food, the prison dress, the classification of prisoners, their hours of recreation, and their hours of work.

In order to preserve intact the jurisdiction of the Sheriff, provision has been made in the case of any prisoner condemned to death confined in the House of Correction, to allow the Sheriff to demand his body and to have the sentence executed. I need hardly say that it is in no wise intended to detract from the dignity or to impair the honor of the Sheriff's office: but it is obvious that a Chief Commissioner or Magistrate always available, experienced in his work, and not liable to be changed yearly, is more qualified for the superintendence of the House of Correction, than the Sheriff who is changed every year.

In this respect the English precedents have been closely followed.

In England the Houses of Correction are under the visiting Justices and the Jail is under the Sheriff. One further proviso has been added by which, if this Act shall pass and work satisfactorily, the Governor-General, by an order in Council, may extend its provisions to any House of Correction now existing, or that may hereafter be established, in any part of the British Territories in India.

These, Sir, are the main provisions of this enactment, and they are believed to be sufficient to meet any emergency that may arise; and, in this view, while inviting your particular scrutiny and that of the Honorable Judge on my right, to the same, I beg leave to move the first reading of the Bill.

The Bill was read a first time.

INCOME TAX

SIR BARTLE FRERE moved the second reading of the Bill "for limiting in certain cases for the year commencing from the 31st day of July 1861, the amount of Assessment to the Duties chargeable under Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices) and Act XXXIX of 1860 (to amend Act XXXII of 1860)."

The Motion was carried, and the Bill read a second time.

CONSOLIDATED CUSTOMS BILL.

MR. ERSKINE moved the second reading of the Bill "for the consolidation and amendment of the laws relating to the Collection of Customs Duties."

The Motion was carried, and the Bill read a second time.

MUNICIPAL ASSESSMENT (BOMBAY).

The Order of the Day being read for the third reading of the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay)"—

MR. ERSKINE moved that the Bill be re-committed to a Committee of the whole Council for the purpose of introducing a merely formal amendment, namely, the substitution of "the 1st of September 1861" for "the 15th of April 1861" as the date of commencement of the Act.

Agreed to.

The Bill passed through Committee with the proposed amendment, and, the Council having resumed its sitting, was reported.

MR. ERSKINE then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The Despatch from the Secretary of State was then read as follows :—

"*India Office, London, 7th June* 1861.

Legislative No. 7.

MY LORD.—Your letter, dated 9th April (No. 10) 1861, stating that an Act had been passed by the Legislative Council, and assented to by the Governor-General deferring the introduction of the Penal Code till the 1st January 1862, in consequence of the translations of the Code into the several vernacular languages not having been completed, and of the small progress which has been made in passing the Code of Criminal Procedure through the Committee of the Legislative Council, has been laid before me in Council.

2. Under the circumstances stated, I approve of the course which has been taken, and of the Act suspending the introduction of the Penal Code, to which your Lordship's assent has been given. At the same time I regret that this important measure is not to come into operation until the commencement of the next year; and I trust that every exertion will be made by the Members of your Lordship's Government to prevent any unnecessary delay in the progress of the Code of Criminal Procedure through the Legislative Council.

3. To this end, I would suggest for the consideration of your Lordship in Council, that matters of merely local interest, and of comparatively inferior importance, might be deferred, so as to enable the Legislative Council to proceed as rapidly as is consistent with due deliberation, with a measure which is urgently used, and which is to affect the whole of the British possessions in India.

I have the honor to be, &c.,

(Sd.) C. WOOD."

The Committee proceeded to consider the Chapter of Lunatics, as proposed to be altered by the Chairman. Peacock.

Sections 1 to 7 were severally passed as follows :—

1. "When any person who is charged with any offence shall appear to the Magistrate having jurisdiction, to be of unsound mind, and incapable, in consequence, of making a defence, the Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District or some other Medical Officer, and thereupon shall examine such Civil Surgeon or other Medical Officer, and shall reduce the examination into writing, and if the Magistrate shall be of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

2. If any person who shall be committed for trial before a Court of Session, shall at his trial appear to the Court to be of unsound mind and incapable of making his defence, the Court shall in the first instance try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence, and thereupon the trial shall be postponed.

3. Whenever any investigation or trial of a case shall be postponed under Section 1 or 2 of this Chapter, the Magistrate or Court of Session, as the case may be, may at any time resume the investigation or trial, and require the accused, if detained in custody, to be brought before him, or if the accused has been released on security, may require his appearance.

4. If when the accused appears, or is again brought before the Magistrate or the Court of Session, as the case may be, it shall appear to such Magistrate or Court that the accused is in a fit state of mind to make his defence, the investigation shall proceed, or the accused shall be put on his trial, as the case may

require. If it shall appear that the accused is still of unsound mind and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of Section I or II.

5. In any case in which an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence be bailable, may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented doing injury to himself or any other person and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the local Government to which the case shall be reported shall direct.

6. Whenever any person is acquitted upon the ground that at the time at which he is charged to have committed the offence, he was by reason of unsoundness of mind incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether he committed the act or not.

7. Whenever such finding shall state that the accused person committed the act charged, the Magistrate or Court of Session before whom the trial was held, shall, if the act charged would but for the incapacity found have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session shall seem fit, and shall report the case for the order of the local Government. The local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody."

The postponed Section 8 provided as follows :—

"No person, against whom any such special finding shall have been given, shall be entitled to be discharged out of custody on being restored to soundness of mind, unless by order of the local Government."

The Section was proposed by the Chairman to be altered as follows :—

"When any person is confined under the provisions of Section 5 or 7, it shall be lawful for the Inspector of Jails or the Visitors of Lunatic Asylums to visit such person in order to ascertain his state of mind, and such person shall be visited once at least in every six months by one of such officers, who shall make a special report as to the state of mind of such person. If such officer in the case of a person confined under Section 5, shall report that in his opinion such person is capable of making his defence, such person shall be taken before the Magistrate or Court of Session as the case may be at such time and place as the Magistrate or Court shall appoint, and such Magistrate or Court shall deal with such person under the provisions of Section 4, and may receive the certificate of the inspecting officer as evidence. If such person shall be confined under the provisions of Section 7, and the inspecting officer as aforesaid shall certify that in his judgment such person may be discharged without danger of his doing injury to himself or any other person, such person shall be taken before the Sessions Judge or the Magistrate of the District, and if such Judge or Magistrate shall be satisfied that he may be discharged with safety as aforesaid, such Judge or Magistrate shall order him to be discharged."

MR. HARINGTON said, he could not consent to the material alteration of the present practice which was proposed in the concluding part of this Section, first, because no reason had been assigned for so great a change, and, secondly, because he could not bring himself to think that the Magistrate or Sessio s Judge was the proper authority to determine, whether a person who had committed an act which, but for his state of mind at the time he committed it, would have been a serious offence or crime rendering the perpetrator liable to a heavy penalty, extending even to a sentence of death, was in a fit condition to be again let loose upon society. He believed that no such power as that now proposed to be given to the Magistrates and Sessions Judges in this country was vested in the Magistrates or in any Criminal Court at home. There it could be exercised, he understood, only by the Secretary of State for the Home Department, and the same reasons which led to the power being given to that Officer, no doubt, induced the Legislature of this country to confer the power, not upon the local authorities by whom it had never been exercised, but upon the local Government by which, acting with the advice of the Sudder Court, it had always been exercised ; and he could not agree to the alteration now proposed, which would take the power from the Executive Government and give it to Officers holding the comparatively subordinate position of Magistrate or Session Judge. Looking at the question in a legal point of view,

he apprehended that the Criminal Courts could not legitimately interfere after the acquittal by them of the accused person. With that acquittal their power to act judicially ceased. The case was then, as it were, taken out of the hands of the Courts, and fell within the cognizance of the Executive Government in its capacity of guardian of all its subjects. It was not alleged that the power which had been hitherto exercised by the Executive Government had been abused, or that any inconvenience had resulted from the power being in the Executive Government, and not in the local Authorities. The present practice had been in force for more than half a century. As he had already shown, it was conformable to the practice at home; and he submitted that it ought not to be altered unless found inconvenient or objectionable, which had not been shown to be the case. This was the objection which he entertained in principle to the proposed Section. Then he observed that the Section made no provision for the cases of persons who were unable to be put upon their trial for offences charged against them by reason of unsoundness of mind, but who were at large on bail. Some provision seemed to be required to keep their cases in view. This was pointed out on a former occasion by the Honorable Member for Bombay, and he (Mr. Harington) had prepared a Section to meet that Honorable Member's objection. The Section proposed by the Honorable and learned Vice-President did not indicate what Session Judge was to have the power of ordering the discharge of an accused person acquitted on account of insanity, on his being restored to a sound mind. The trial might have taken place at Meerut, and the accused person might be confined in the Lunatic Asylum at Benares. It surely could not be intended to send this man from Benares to Meerut, in order that he might be again brought before the Court which tried him, notwithstanding that the Judge who held the trial might have been removed in the interim. He thought that such a proceeding would be exceedingly hard and improper in so far as the accused person was concerned, and that it should not be allowed. These were some of the objections which he entertained to the Section as regarded its details, and he must say he greatly preferred the Section which had been prepared by him.

THE CHAIRMAN said, it appeared to him that, when a man tried for an offence, even murder for instance, was acquitted on the ground of lunacy, he was not guilty of any crime, and ought not therefore to be punished for any crime, but ought to be restrained so that he might not do any injury to himself or to the public at large. It was therefore necessary to confine him. The question then arose whether the Government ought to have the power to confine that man as long as they pleased, so as to prevent him from doing injury to himself or others. To meet such a case, the Section now under discussion provided that it should be lawful for the Inspector of Jails or the Visitors of Lunatic Asylums to visit the lunatic in order to ascertain his state of mind, and that the lunatic should be visited once at least in every six months by one of such Officers who should make a special report as to the state of mind of the lunatic. The Section went on to provide that, if the lunatic should have been acquitted on the ground of lunacy, and the Inspecting Officer should certify that in his judgment the lunatic might be discharged without danger of his doing injury to himself or others, the lunatic should be taken before the Sessions Judge or the Magistrate of the District, and if such Judge or Magistrate should be satisfied that he might be discharged with safety, the Judge or Magistrate should order him to be discharged. That appeared to him (Sir Barnes Peacock) to be a sufficient security to prevent any man from doing injury to himself and others, and there was the further security that a man would not be confined in Jail or in a Lunatic Asylum longer than might be absolutely necessary. Then with regard to the detention of persons for want

of bail pending investigation or trial, if the offence were bailable, the accused might be released on sufficient security being given for his safe custody and for his appearance when required. But if the offence were not bailable, the accused would be kept in safe custody in such place as the local Government to whom the case would be reported would direct. Now the Government would direct the accused to be kept either in a Lunatic Asylum or in the Jail, and therefore this Section required his being visited and reported on by the Inspector of Jails or the Visitors of Lunatic Asylums. The Section went on to provide that, if the Inspecting Officer should report that in his opinion the accused was capable of making his defence, the accused should be taken before the Judge or Magistrate, and the Judge or Magistrate should deal with him under the provisions of Section 4, and might receive the certificate of the Inspecting Officer as evidence. It appeared to him that the Section as now proposed provided sufficient protection, both as regarded the public by preventing dangerous lunatics from being let loose on society, and as regarded lunatics confined in Lunatic Asylums or in Jail. Whether the lunatic had committed murder was not material, for he could not be punished for an offence committed without a criminal intention, and then the only question for consideration was, whether he should be detained in confinement so long as the Government chose to do so or did not choose to release him. The Honorable Member for the North-Western Provinces had referred to the Act passed in England. But then it ought to be remembered that that Act only applied to cases of felony.

MR. FORBES said that, as a general rule, it was not good that power to undo an act should be given to any authority lower than that which had originally done the act, and he did not think it right that a Magistrate should have the power to undo an Order of the Government There was one matter, however, which, it appeared to him, had escaped the attention of the Honorable and learned Chairman, and that was the almost physical impossibility of an Inspector of Jails visiting all the Jails every six months. There were twenty-two Districts under the Madras Presidency, in each of which there was a Jail, and there was but one Inspector of Jails for the whole Presidency.

THE CHAIRMAN said, he was quite willing to substitute "twelve months" for "six months."

MR. SETON-KARR said that, after the arguments used by the Honorable Member for the North-Western Provinces and the full exposition of the Honorable and learned Vice-President, he felt himself enabled to draw a distinction between the two Sections referred to. Section 5 referred to cases still within the possible cognizance of the Judge or the Magistrate, and, as such, within the domain of the Judicial Courts. Section 7 contemplated cases which had passed out of the hands of the Court, on which the Court had pronounced a regular finding, and which therefore belonged to the province of the Executive Government. The Court in these latter cases, had exercised all its powers within the limits prescribed to it by law, and had discharged its office. Then came what would be an exercise of discretion, and in this light the Government possessed functions analogous to those which belonged to it as the fountain of mercy. It would, in fact, be called on to grant a practical remission of a penalty. This was a matter which had better be left to the local Government than to the Courts, and there might be really practical inconvenience or obstacles to the course proposed, of deputing an Inspector, once in six or twelve months, to any Jail wherein a lunatic might be confined. Moreover the law now in force, placing this power in the hands of the Government, had worked well hitherto and should not be altered without good reason. Government had never been harsh or unreasonable in these cases, and had never kept men in confinement as lunatics without very good cause. In this view, he could not support the amendment in its present shape.

MR. ERSKINE said that, with regard to the question of principle involved in cases falling under Section 7, he thought they must all concur in the opinion which had been expressed by the Honorable and learned Chairman, that in such cases the final decisions must be regarded not as acts of mercy, but as acts of justice. There were, however, two considerations which weighed with him and must influence his vote on this question. The one was the apparent unsuitableness of the person—that is, the local Judge—to whom it was proposed by the amendment to entrust the duty of final decision; and the other was the special fitness of the Government to get that duty discharged. It seemed to him that the judicial part of the proceedings was completed when judgment was given by the Court after trial, and what remained to be done was a matter as to which the Judge would be dependent on the opinions of others. The Judge would no longer have to consider any point of law or of fact, but would simply have to consider whether or not the person in confinement would be likely, if discharged, to do injury to himself or to any other person. This was purely a matter of opinion and inference, and a medical opinion *only*, or that of a person who had scientifically studied the subject, would be of real value. In other cases where the question was whether a person actually exhibited symptoms of insanity at some particular time, the evidence of any by-stander might be of importance, and the duty of eliciting the truth could best be performed by a Judge trained to deal with conflicting testimonies. But in the cases now referred to the behaviour of the man a month before, or a week before, would be comparatively immaterial. The question would relate solely to the future, and would have to be decided almost exclusively by medical opinions. Now the Inspector of Jails was not necessarily a Medical Officer; he was not so, he (Mr. Erskine) believed, in the Madras Presidency, and had not until recently been so in Bombay. In the greater number of cases, therefore, if a person was confined in a Civil Hospital, the Inspector would have to be satisfied with the opinion of the Civil Surgeon whose opinion might not be particularly valuable in cases of lunacy. Yet this would generally be all that the Judge would have to guide him. The Government, on the other hand, would always be in a position to obtain the best information and opinions on the subject. In Bombay the practice generally was to bring a lunatic down to the Presidency Asylum which was superintended by an Officer who had devoted much time to this particular kind of malady and had the best means of making a careful examination into such cases. If an Officer so situated came to the opinion that a person ought to be released from confinement, he would report his opinion to the Government, who would then decide on the best evidence and opinions available. He thought that that was the safer and more cautious way of proceeding in such cases, and he must therefore vote against the amendment proposed by the Honorable and learned Chairman.

SIR CHARLES JACKSON must say he did not see the force of the objections taken to the proposed Clause. The Clause, as it stood, gave power to the local Government only to order the discharge of a person out of custody on being restored to soundness of mind. Now the Honorable Member for the North-Western Provinces had said that that was the present law and that that law had never been abused. He believed it was not the intention of the Honorable and learned Chairman to say that it had been abused. But what his Honorable and learned friend meant was that it was a power round which every possible safeguard ought to be fenced. It was said by the Honorable Member for the North-Western Provinces that the Government would always take the best opinion. Now what did the Honorable and learned Chairman propose, but simply to point out the way in which the opinion might be taken. The Section provided that the Inspector of Jails or the Visitors of Lunatic Asylums should

visit and make a special report as to the state of mind of each lunatic confined under Sections 5 and 7 ; and it then went on to say that, in cases under Section 5 where clearly the matter was *sub judice*, the opinion of the Judge or Magistrate should also be taken. Then again, although it was quite clear that a matter under Section 7 was no longer *sub judice*, still for greater caution the opinion of the Judge or Magistrate should also be taken in addition to that of the Visitors of Lunatic Asylums. Therefore he thought that the object of the Honorable and learned Chairman's amendment was a perfectly legitimate one. He did not think that the decision of the Government should be final against the alleged lunatic and his friends when the Visitors had in fact given an opinion in favor of his sanity. He thought that the alleged lunatic was entitled to have his case regularly tried, and that there should be every enquiry, not only by the Inspector of Jails or the Visitors of Lunatic Asylums, but also by a Judge or Magistrate, in order to ascertain whether the lunatic was in a fit state to be enlarged. In this view, he thought the proposed Clause was a very useful and proper one, and he should vote in support of it.

After some further discussion, it was resolved, on the suggestion of Mr. Harington, to divide the Section into three Clauses, and to consider each Clause separately.

Clauses 1 and 2 were then severally put and carried as follows :—

"1. When any person is confined under the provisions of Section 5 or Section 7, it shall be lawful for the Inspector of Jails or the Visitors of Lunatic Asylums to visit such person in order to ascertain his state of mind, and such person shall be visited once at least in every twelve months by one of such Officers who shall make a special report as to the state of mind of such person.

2. If such person is confined under Section 5, and such Officer shall report that in his opinion such person is capable of making his defence, such person shall be taken before the Magistrate or Court of Session as the case may be, at such time as the Magistrate or Court of Session shall appoint, and such Magistrate or Court shall deal with such person under the provisions of Section 4, and may receive the certificate of the Inspecting Officer as evidence."

Clause 3 was then proposed as follows:—

"If such person shall be confined under the provisions of Section 7, and the Inspecting Officers as aforesaid shall certify that in his judgment such person may be discharged without danger of his doing injury to himself or any other person, the local Government may order the discharge of such person. If the Government do not order his discharge, the person confined shall be taken before any Sessions Judge who shall investigate the case, and if he be satisfied that such person may be discharged without any such danger as aforesaid, he shall order his discharge."

THE CHAIRMAN said that, in proposing this Clause, he wished to say only a few words in explanation. In such cases evidence must be adduced by both parties, and the evidence would doubtless be of a conflicting character. But if the Judge were competent to try the accused in the first instance, and to determine whether the accused might be hanged or confined in a Lunatic Asylum, surely the same Officer was competent to deal with the evidence as to the subsequent state of mind of the prisoner. He (Sir Barnes Peacock) was intending at one time to propose that the decision of the Session Judge should be final, but he had not done so. Suppose a woman had murdered her child in a fit of frenzy produced by a fever at the time of her confinement, and the Inspecting Officer was subsequently to report that the woman had been restored to her right senses and was a fit person to be discharged ; he (Sir Barnes Peacock) did not mean to say that the Government would refuse to act on that report improperly. But they might refuse to do so on what they might consider good grounds. Was the Government of their own opinion to refuse to discharge the woman ? What he wanted was that a person might, by a process in the nature of a *habeas corpus*, be brought up before a Session Judge, and that the Session Judge should try between the Government and the lunatic whether he was in a

fit state to be discharged. He (Sir Barnes Peacock) would not make the Clause applicable to the case of a person who had published a seditious libel, or been guilty of other misdemeanors of that nature, but would confine it to the most serious offences of the nature of felonies. If it was also considered desirable, he would provide for the report being made by the Inspector of Jails or some other competent person. But he certainly thought that, if the Government refused to discharge a lunatic, though the report of the Inspector of Jails or of the Visitors of Lunatic Asylums had declared that he was in a fit state to be set at liberty, there ought to be some legal tribunal before which the matter should be publicly determined, whether the prisoner was now a lunatic or not, and whether, if he was not, he should continue to be confined in the Jail or Lunatic Asylum in which he had been originally placed, not because he had committed a crime, but because he had been acquitted only on the ground of lunacy; and therefore he proposed the insertion of the foregoing Clause in addition to those already inserted.

SIR BARTLE FRERE said, he should have entirely agreed in all the remarks of the Honorable and learned Chairman, if insanity were an invariable condition in such cases. But in the very case put by the Honorable and learned gentleman, that of puerperal mania, this was not so. He would set aside entirely the case of a man who was considered dangerous by reason of his having published a seditious libel. He hoped we should never have in this country occasion to legislate for such cases; he would confine himself entirely to the cases of persons who could not be discharged without danger of doing personal injury to themselves or to others. He would take the case put by the Honorable and learned Chairman, and ask whether there was not something to be said on behalf of the poor lunatic herself, and whether it was not the duty of the Government to see that the woman should not be thrown loose on the world. The Court of Justice had but one duty to perform—to decide whether the person was or was not confined for the cause alleged. But Government had a higher duty to perform as guardian of the supposed lunatic, and had to see that people who could not take care of themselves and had no one to take care of them were not cast adrift on the world uncared for. The Clause, as it was proposed, put the opinion of the Session Judge who might be an utterly inexperienced Officer in these matters, higher than that of the Government who had much better means of judging and who had no possible bias in the matter. There was a great difference between judging whether a man, when he committed a specific act, was or was not mentally responsible for his acts, and deciding whether the same man was likely again to commit such acts, while in a state not to be really responsible for them. The one required no legal training to decide, while the other could only be decided by persons who had undergone a long course of professional medical education in that particular branch of the science. For these reasons, he should propose the following, by way of amendment, on what had been proposed by the Honorable and learned Chairman:—

"If such person shall be confined under the provisions of Section 7, and the Inspecting Officer as aforesaid shall certify that in his judgment such person may be discharged without danger to himself or any other person, such person shall be taken before the Sessions Court nearest to the place where he is confined, and if such Court shall be satisfied that he may be discharged with safety as aforesaid, he shall certify this opinion to the local Government, who shall thereupon order such person to be transferred to a public Lunatic Asylum if he has not been already sent thither, or shall within six months order him to be discharged, unless a Commission of three Medical Officers, of whom the Officer in charge of the Asylum shall be one, shall certify that he is of unsound mind and cannot be set at liberty without danger to himself or others."

MR. FORBES said that in his opinion one great objection to the proposal which had been made by the Honorable and learned Chairman, to let the Judge be the person to decide on the propriety or otherwise of letting loose

on society a person who had once killed another in a fit of insanity, was that in many cases all the evidence that could be adduced before the Judge would be such as would have no bearing upon the question to be decided. The evidence produced would be as to the individual's conduct, habits, and disposition during the time he had been under treatment in an Asylum, and all of these might have been exemplary and so lead to his release, while at the same time his release might be most dangerous. It must be remembered that in an Asylum a man was not subject to all the excitements, temptations, and incentives which beset him in the world, that every thing that could irritate was removed, and every thing that could soothe was done, and that therefore a patient's conduct in an Asylum which would be placed in evidence before a Judge, and on which evidence the Judge would have to decide, would be a very fallacious guide to what the patient's actions might be when exposed to all the excitements which had led to his committing the act for which he was originally placed under treatment. Government would take a broader view of the question than a Judge bound by the rules of evidence could take, and in his opinion it was in the hands of Government that the decision on the case should rest.

MR. HARINGTON proposed, by way of amendment on the Clause proposed by Sir Bartle Frere, that the Clause stop at the words "order him to be discharged."

After some further discussion, the Council divided as follows on Mr. Harington's amendment :—

Ayes 3.	*Noes* 4.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Sir Bartle Frere.
	The Chairman.

SIR BARTLE FRERE'S amendment was then put, and the Council divided as follows:—

Ayes 2.	*Noes* 5.
Mr. Seton-Karr.	Sir Charles Jackson.
Sir Bartle Frere.	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	The Chairman.

THE CHAIRMAN'S amendment was next put, and the Council divided as follows :—

Ayes 2.	*Noes* 5.
Sir Charles Jackson.	Mr. Seton-Karr.
The Chairman.	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Bartle Frere.

The original Section was then put, and the Council divided as follows:—

Ayes 3.	*Noes* 4.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Sir Bartle Frere.
	The Chairman.

The following Clause was ultimately proposed by Sir Bartle Frere, and carried :—

"If such person shall be confined under the provisions of Section 7, and the Inspector of Jails or the Visitors of Lunatic Asylums, as the case may be, shall certify that in his or their judgment such person may be discharged without danger of his doing injury to himself or to any other person, the local Government shall thereupon either order his discharge or order such person to be transferred to a public Lunatic Asylum if he has not been already sent to such an Asylum, and shall within six months appoint a Commission consisting of a Judicial Officer not below the grade of a Sessions Judge, and two Medical Officers whereof the Chief Medical Officer attached to the Lunatic Asylum shall be one. The said Commission shall make formal enquiry into the state of mind of such person, taking such evidence as shall be necessary; and if they consider that he can be set at liberty without danger to himself or to any other person, he shall be discharged."

Section 9, as proposed to be altered by the Chairman, provided as follows :—

"Whenever it shall appear to the local Government that any person, imprisoned by the sentence of any Magistrate or Court is of unsound mind, the local Government, by an order which shall set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a Lunatic Asylum, or other fit place of safe custody, there to be kept and treated as the local Government shall direct; and when it shall appear to the local Government that such person has become of sound mind, the local Government by an order directed to the person having charge of him, shall remand

such person to the custody from which he was removed, if then still liable to be kept in custody, or if not, shall order him to be discharged out of custody."

THE CHAIRMAN proposed the omission of the words "or other fit place of custody," and the insertion of the following words after the words "as the local Government shall direct":—

"during the remainder of the term of imprisonment ordered by the sentence, or if it shall be certified by a Medical Officer that it is necessary for the safety of the prisoner or others that he should be detained under care and treatment, then until he shall be discharged according to law."

Agreed to.

THE CHAIRMAN then moved the addition of the following words to the above Section:—

"The provisions of Section 9 of Act XXXVI of 1858, shall apply to persons confined in a Lunatic Asylum, under this Section, after the expiration of the imprisonment ordered by the sentence. The period during which a person shall be confined in a Lunatic Asylum shall be reckoned as part of the period of imprisonment ordered by the sentence."

The Motion was carried, and the Section as further amended then passed.

Section 10, as proposed to be altered by the Chairman, provided as follows:—

"Whenever any relative or friend of any person detained under the provisions of Section 7, is desirous that such person shall be delivered over to his care and custody, the local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government, that the person detained shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may make an order that the person so detained may be delivered to such relative or friend. Whenever such person shall be so delivered over, it shall be upon condition that he shall be subject to the inspection of such Officer as the local Government shall think necessary to appoint, and at such times as such Government shall direct."

THE CHAIRMAN moved the addition of the following words to the above Section:—

"The provisions of Clause 3 Section 8 shall apply to persons detained under the provisions of this Section, and the certificate of the Inspecting Officer appointed under this Section shall have the same effect as a Certificate of an Inspector of Jails or the Visitors of Lunatic Asylums under the said Clause of that Section."

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved the addition of the following words to Section 3:—

"Until such investigation or trial is completed, the case shall be considered as pending before the Magistrate or Court of Session, and shall be included in any register of pending cases kept by such Magistrate or Court. The surety of such person shall be bound at any time to produce him to any Officer whom the Magistrate or Court may appoint to inspect him, and the certificate of such Officer shall have the same effect as the certificate of an Inspector of Jails or the Visitors of Lunatic Asylums granted under Clause 2 Section 8 of this Chapter."

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON then went back to Section 8, Clause 1, and moved the omission of the words "the Inspector of Jails or the Visitors of Lunatic Asylums," and the substitution of the words "the Inspector of Jails if such person is confined in a Jail, or for the Visitors of Lunatic Asylums, or any two of them, if such person is confined in a Lunatic Asylum."

Agreed to.

Corresponding alterations were ordered to be made in the other Clauses, and the Chapter was then finally passed.

MR. ERSKINE went back to Section 307, which provided that—

"The examination of a witness taken and attested by the Magistrate, may be given in evidence if the witness be dead or the Court be satisfied that for any sufficient cause his attendance cannot be procured;"

and moved the insertion of the words "in the presence of the accused person" after the word "Magistrate."

The Motion was carried, and the Section as amended then passed.

Section 309 provided as follows:—

"The declaration of a deceased person, whose death is the subject of enquiry, may be given in evidence if the deceased person at the time

BENGAL LIBRARY

of making such declaration believed himself to be in danger of approaching death, although he entertained at the time of making it hopes of recovery."

THE CHAIRMAN said, it was not necessary that the declaration of a deceased person should have been made in the presence of the accused to admit of its being given in evidence. He should therefore move the insertion of the words "whether it be made in the presence of the accused person or not" after the word "enquiry" and before the words "may be given in evidence."

Agreed to.

THE CHAIRMAN said, he did not see why the dying declaration of a person regarding the death of another man should not be taken in evidence. The rule in England was thus stated at page 28 of Roscoe's Criminal Evidence :—

"It is a general rule that dying declarations, though made with a full consciousness of approaching death, are only admissible in evidence where the death of the deceased is the subject of the charge, and the circumstances of the death is the subject of the dying declarations."

No reason was assigned why, the principle of taking dying declarations in evidence being once admitted, the subject of the declarations should be confined to the death of the person whose death was the subject of enquiry.

After some conversation, the words "whose death is the subject of enquiry" were omitted, on the Motion of Mr. Erskine; and the Section, as amended, then passed.

SIR CHARLES JACKSON proposed the introduction of the two following new Sections after Section 310 :—

"The Court, at the close of the evidence on behalf of the accused person if any evidence is adduced on his behalf, or otherwise at the close of the case for the prosecution, may put any question to the accused person which it may think proper. It shall be in the option of the accused person to answer such questions.

The accused person or his Counsel or Agent may address the Court at the close of the case for the prosecution, or at his option at the close of any evidence that may be adduced in his behalf."

After some conversation, the further consideration of the proposed Sections, as well as of the Bill, was postponed, and the Council resumed its sitting.

INCOME TAX.

MR. HARINGTON said, he had been asked by the Honorable Member of Government (Sir Bartle Frere) to move that the Bill "for limiting in certain cases, for the year commencing from the 31st day of July 1861, the amount of assessment to the duties chargeable under Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices) and Act XXXIX of 1860 (to amend Act XXXII of 1860)" be referred to a Select Committee consisting of Sir Bartle Frere, Mr. Harington, Mr. Forbes, Mr. Erskine, and Mr. Seton-Karr.

Agreed to.

MR. HARINGTON said, he had also been asked by the Honorable Member of Government to move that the Standing Orders be suspended to enable the Select Committee to make their report within one week. It was obviously desirable that the Bill should be passed rapidly through its remaining stages.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Select Committee be instructed to present their report within one week.

Agreed to.

BRANCH RAILWAYS, &c.

MR. SETON-KARR moved that Mr. Erskine be added to the Select Committee on the Bill "to provide for the construction, by Companies and by private persons, of Branch Railways, Iron Tramroads, common roads, or canals, as feeders to Public Railways."

Agreed to.

CONSOLIDATION CUSTOMS BILL.

MR. ERSKINE moved that the Bill "for the consolidation and amendment of the laws relating to the collection of Customs Duties" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Seton-Karr, and the Mover.

Agreed to.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. ERSKINE moved that Sir Robert Napier be requested to take the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay)" to the Governor-General for his assent.

Agreed to.

CATTLE TRESPASS.

MR. ERSKINE moved that a communication received by him from the Government of Bombay, regarding the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)", be laid upon the table and printed.

Agreed to.

The Council adjourned.

Saturday, July 27, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

MUNICIPAL ASSESSMENT (BOMBAY).

THE VICE-PRESIDENT read a Message from the Governor-General, communicating his assent to the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a fund for Municipal purposes in the Town of Bombay)."

INCOME TAX.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "for limiting in certain cases for the year commencing from the 31st day of July 1861, the amount of assessment to the Duties chargeable under Act XXXII of 1860 (for imposing Duties on profits arising from Property, Professions, Trades, and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860);" and moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Sections I to VI were passed as they stood.

Section VII was passed after amendments.

Sections VIII to X were passed as they stood.

Section XI provided as follows:—

"The Governor-General of India in Council may extend the provisions of this Act to all or any of the years subsequent to the year ending on the 31st July 1862, during which the said Act XXXII of 1860 shall remain in force."

THE CHAIRMAN said he understood, when this Bill was brought in, that it was only intended to apply to the assessments for the ensuing year. As the Bill now stood, however, it proposed to authorise the Governor-General in Council to extend its provisions to all or any of the subsequent years during which the Income Tax Act should remain in force. It appeared to him that it was quite altering the principle of the Income Tax Act, to extend the same assessment from one year to five years. A merchant, whose business was small this year and might be very much increased the next year, would not apply for a fresh assessment, and, if he were within a District to which this Act might be applied, would not be liable to a fresh assessment during any portion of the duration of the Income Tax Act. On the other hand, a merchant, whose business was large this year and might decrease next year, would be entitled to demand a fresh assessment. He should therefore vote against this

Clause. The Clause was one which certainly ought not to be inserted unless the Bill were republished.

SIR BARTLE FRERE said, he thought the Section which permitted fresh assessments to be made on the tax-payer's application, was sufficient to secure the tax-payer against over-taxation under this Act. The only practical objection to the Section now before the Committee was that, if Government should without good cause extend this Act to any District, possibly the revenue might suffer by the non-taxation of persons whose business had improved since their returns were made. It was hardly likely, wherever such might be the case, that the Government would wish to forego the increase of revenue by extending the operation of this Act to those places without due cause. This Act would enable the Government to exempt several Districts from making fresh returns where there might be very little variation from the former year; whereas under the provisions of Act XXXII of 1860, it was imperative to issue a number of notices, whether there was any necessity for them or not. He thought it was right to enable Government, in such cases as he had described, to continue the existing assessment for the full five years, and that at any rate it would be better to leave the power in the hands of the Government, and he should prefer leaving the Section as it now stood.

MR. HARINGTON said, the Bill was so favorable to the public that he could not consider that it would be necessary to publish it before it was read a third time if the Section now under consideration were retained. That Section was merely permissive. The present Bill was a necessity almost for the coming year, and was required to give relief, as well to the Officers employed in carrying out the provisions of the Income Tax Act, as to the public. Its extension to future years would depend upon many circumstances which could not be foreseen; and as the Government would be the sufferers by the extension if, as was supposed by some, loss of revenue would be the consequence of such extension, he thought that they might very safely entrust the Government with the power contained in the proposed Section, and leave the Government to use its discretion in exercising it or not. He should therefore vote for the Section.

SIR CHARLES JACKSON said, he was decidedly opposed to the passing of this Section, because it was contrary to the principle upon which the Income Tax Act was based, and was in effect a frittering away of that measure. That Act had been carried after a hard fight, upon the broad principle that all incomes should be taxed alike. He was himself taxed to the utmost farthing of his income, and he did not see why others should not be taxed in the same way. But this would not be, if this Clause was passed, and the present returns were accepted as returns from natives for the next five years, many of their returns being notoriously incorrect. This Clause, as he had said before, would merely fritter away the provisions of the tax.

MR. FORBES said, the object of this Section was not to remit any portion of the Income Tax, but to relieve the Government of the labor and trouble of issuing fresh notices and making fresh assessments in Districts where the assessments had been already correctly made, and to relieve the people from being harassed with notices and forms of returns when the assessments made on them for the present year were, on the whole, accurate. If, on the extension of this Act to any place, it should appear that any person was not fully taxed, owing to his having dishonestly evaded giving a return of his full income, the circumstance might be brought to the notice of the Collector or Commissioners by any one willing to inform, and the person would then be served with a fresh notice calling upon him to make a fresh return; and if there were any Districts or places in which there was reason to believe that the assessments had, as a general rule, been imperfectly made, it would be quite com-

petent to the Government not to extend the Act to those places, since the Bill gave power to the local Government to extend its provisions to such parts only of the territories subject to their government as they considered expedient.

MR. ERSKINE said that the Section, as it now stood, was perhaps hardly consistent with the Preamble of the Bill. The Preamble recited that it was "expedient to limit in certain cases for the year commencing from the 31st day of July 1861," the amount of assessment chargeable to the Income Tax; whereas this Section would extend the limitation to all or any of the years during which the Income Tax Act should remain in force. In this respect, therefore, some verbal amendment at least seemed to be required. But again he did not know—and it was difficult for any one, except those in the position of the Honorable Member of Government, to know—how far it would be safe and proper to enact this Section without allowing to the local Governments, particularly those of the larger Presidencies of Madras and Bombay, an opportunity of expressing their opinions, if they had not already done so, as to the applicability of this portion of the Act to their territories; or perhaps the application of this Section might be restricted to territories not included in the three older Presidencies. He offered these remarks rather as suggestions to his Honorable friend opposite.

MR. SETON-KARR said that it occurred to him, whether it was not a question, how Government, having once committed itself to the intimation conveyed in this last Section, could practically ever withdraw it again. Government now announced that the assessment for the past year would be the assessment for the next, and the idea seemed to be that the same privilege would extend to the whole four years for which the tax was to last. Now the community which had received a boon for this year, would be discontented, after such an intimation, if the Section were not made use of, and if the boon of one year were withdrawn in the next. Government was binding itself rather needlessly, and it would have been much better if the Section had been omitted from the Act.

THE CHAIRMAN said, he understood that it was intended by this Bill to enable the Governor-General in Council, in any part of the territories subject to any of the local Governments or throughout the whole of India, to order that the assessments already made should be continued for the ensuing year, and on this understanding he had voted for the suspension of the Standing Orders. But it now appeared that the Bill would enable the Governor-General in Council to extend the assessment of one year to the whole term of five years. Now Section I did not apply to persons, but to Districts. It provided :—

"It shall be lawful for the Governor-General of India in Council, by an order to be published in the Government Gazette, to direct that within the territories or any part of the territories subject to the local Government of any Presidency or place, the general or special notices required by Sections 37 and 38 of the said Act XXXII of 1860, shall not be issued for the year commencing from the 31st day of July 1861, &c."

So that, wherever the Act was extended, no person would be obliged to make a return for the ensuing year, except under Section VII, that is, in case he had made no return for one whole year, or in case there should be reason to believe that he had made a fraudulent return of his Profits or Income.

The Honorable Member for the North-Western Provinces had said, that this Act was in favor of the public. But what did the Honorable Member call being in favor of the public? He (the Chairman) did not consider it beneficial to the public that one man should be forced to make a fresh return and to be reassessed every year, whilst the assessment originally made on another might be continued, unless he objected, for the whole term of the Income Tax Act; or when one person might have to pay the tax on the full amount of his income, and another might have

to pay only upon his last year's income —in other words, when one person might be taxed on his whole income, and another on only part of his income. The business of a merchant or of a banker might increase considerably during the next four years, and if he happened to carry on his business within a District to which this Clause might be extended, he would not be obliged to make a fresh return. He would not come under Section VII if he had made an honest return for the first year. There might be two merchants carrying on an equal extent of business; and it might happen that the one who chanced to be in a fortunate District, would have to pay only on £5,000, whereas the other would be taxed on his full income of £10,000.

The Honorable Member for Madras then said that any body might give information to the Collector or Commissioners. He (the Chairman) did not know the nature of the information proposed to be given, and the Honorable Member had not explained of what the information was to be. If he meant information of having made a fraudulent return, then the party informed against would come under Section VII. But if he had made a true return in 1860, although his profits in 1862 might have doubled or quadrupled, he would not be required to make a new return, and would not be liable to any new assessment. That was not fair. This Bill was proposed to enable the Government to get over the difficulty of obtaining returns for the ensuing year. It might not be correct in principle to do so; but it was a principle which it was proposed to adopt for the convenience of the public in general—to prevent them from being called upon to make a new return on the ground that the return for 1860 had been only so lately made. It was not a good principle to say that the return of one person for one year, if he happened to live in a particular District, should be taken as a good return for five years, unless every one was placed upon the same footing. He should therefore object to give the Governor-General in Council the power to extend the Act as proposed by this Section, and to alter the principle of the Income Tax Act, which was the principle of dealing with all alike.

SIR BARTLE FRERE said, he thought, with regard to the objection taken by his Honorable friend the Member for Bombay, as to the discrepancy between the Preamble and this Section, that, if he would bear in mind that the Section simply proposed to authorise the Government to continue the Act for all or any of the subsequent years, he would find that the effect was the same as if the Preamble had specified the subsequent years.

With regard to the objections of the Honorable and learned Judge opposite (Sir Charles Jackson) enforced by the Honorable and learned Vice-President, he should have entirely agreed with them, if he thought that in any part of the country there was a backwardness on the part of Government Officers to use their best exertions in carrying out the provisions of taxation with which they were entrusted. But he did not think so. Now what was the object of this Bill? It did not apply to classes or individuals, but to Districts. We undertook last year to devise a measure which should apply to the whole of the immense and varied population of this country. He did not think that there was one man in a hundred who lived in this country, who had an adequate notion of the magnitude and difficulty of the task of carrying out such a measure in detail. That task, however, was undertaken, and the Act had worked for the last ten or twelve months quite as well as might have been expected. But there was not a person who was in the position of an Assessor or Commissioner, or had had anything to do with the practical working of the Act, either as Collector or Tax-payer, who could say that the machinery and forms were the best that could have been devised. They were found to be unsuited to any but Europeanized countries. However, we had gone through the process at the cost of great trouble and some risk of issuing all these notices and of assessing, as best we could, all who up to the present moment had been

brought within the scope of the tax. Returns had been obtained and assessments made. This no doubt had in many cases been very imperfectly done. In others, however, it had been done so perfectly that there would be little necessity for altering the assessment from year to year during the currency of the Income Tax Act. The effect of this Section would be this, that in such Districts Government would absolve the tax-payers from the annoyance of being annually served with all these fresh notices by the tax-gatherers. The Government would not extend the operation of this Act indiscriminately. It must be borne in mind that the duties which would devolve upon the District Officers throughout India during the ensuing year would be heavier than had fallen on them during any previous period of our History. They had been provided with a new Code of Civil Procedure and a new Penal Code, and would be provided with a new Code of Criminal Procedure, in addition to which a new system of taxation had been introduced. The sole effect of this Section would be that, where the work had been well done and where no person would escape taxation, Government would have power to relieve their Officers and the tax-payers from unnecessary trouble in issuing fresh notices and making fresh assessments during the last three years of the tax. These were the reasons why this Clause had been introduced into the Bill, and he must say that he believed it was for the interest of the public that as far as possible the visitation of the tax-gatherer should be limited to those persons to whom we could not avoid sending him. This could be effected to a great extent by giving Government the power of making the assessment of one year applicable to all five years of the tax. But as the majority of the Council thought differently, he was quite willing to withdraw the Clause.

MR. HARINGTON said, the Honorable and learned Vice-President had taken exception to that part of his previous remarks in which he had mentioned that the present Bill was very favorable to the public. He had stated this as his reason for considering that it was not necessary to publish the Bill before it was read a third time. Notwithstanding what had fallen from the Honorable and learned Vice-President and the Honorable and learned Judge (Sir Charles Jackson), he must repeat that the Bill was very favorable to the public, and he believed it would be so considered. The Government might lose by the operation of the Bill, but he did not think that the public at large could do so; while, as regarded individuals, the Bill allowed any person who objected to be assessed under its provisions to make a fresh return and to claim to be assessed thereon. He was most anxious that the Income Tax Act should have fair play, and that it should be strictly enforced, so far as was consistent with the public good. Notwithstanding the part which he had taken in previous measures, he had no wish for any material change in the Act, nor was he prepared to assent to any alteration which would affect the principle of the Act. He did not believe that the Government would be great losers by the present Bill. If he thought so, he might have some hesitation in giving his assent to the Bill. From the time the Act of last year passed, he had carefully watched its working. He had probably enjoyed more favorable opportunities of doing this than most Honorable Members. During the last recess he had visited several of the most important stations in the Upper Provinces, and the Government had lately done him the honor of appointing him to make enquiries in Calcutta and its vicinity, and the result of his enquiries and observation was that, upon the whole, there had been a very fair assessment made under Schedules 1 and 2 of the Act of last year to which alone this Bill related. He did not mean to say that there had not been some cases in which individuals had escaped or been greatly under assessed. This could not be avoided under any circumstances or under any rules; but, on the other hand, there could be no

doubt that there had been over-assessments. He might instance the case of one city, he need not mention the name, which had agreed to a lump assessment of rather more than a lakh of Rupees. After the punchayet appointed to distribute the amount had gone through the whole city and assessed, as they thought, every person in it liable to the Income Tax, they found they had reached only thirty thousand Rupees of the sum. The liability to make up the entire sum agreed to, was fully admitted, but it was felt that the amount could only be obtained by assessing the wealthier classes far beyond the rate fixed by the Act, and it was expected that in some cases the assessment might amount to 8 or 9 or even 10 per cent. What he had just mentioned he had heard from persons who were entitled to credit, and he must repeat that, upon the whole, he believed that there had been a fair assessment made for the present year under the Schedules to which the present Bill related. Entertaining this view, he thought that the Government might be safely left to exercise its discretion in extending the provisions of the Bill beyond the coming year; but as he understood that the Honorable Member of the Government who had charge of the Bill did not wish to press the Section by which such power would be given, it was not necessary for him to say more on the subject.

MR. SETON-KARR said that he must state, after what had been said by the Honorable Member who had spoken last, that, in the part of the country with which he was acquainted, it was understood that the proceeds of this tax would have been considerably increased next year. In Bengal Proper, no machinery for collections existed when the tax was started. It took time to create the necessary Establishments, and great care was taken not needlessly to harass or vex the people. But certainly the Government of Bengal had hoped to increase the proceeds of the tax in the Lower Provinces. As it was, the productive powers of Bengal were to remain at the point which they had reached this year.

After some further discussion, Section XI was by leave withdrawn.

The remainder of the Bill was passed as it stood; and the Council having resumed its sitting, it was reported.

SIR BARTLE FRERE then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SIR BARTLE FRERE moved that Sir Robert Napier be requested to take the Bill to the Governor-General for his assent.

Agreed to.

FLOGGING.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the punishment of Flogging in certain cases."

ELECTRIC TELEGRAPHS.

THE CLERK reported that he had received a communication from the Home Department, forwarding copies of papers relative to the expediency of rendering the Telegraph Law more effective for punishing persons found guilty of tampering with the Telegraph or with Telegraph employés.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR moved that the Bill "for the better enforcement of discipline in the House of Correction at Calcutta" be read a second time.

MR. HARINGTON said, he did not rise to oppose the Motion for the second reading of this Bill, which proposed to itself a very proper object, and was intended to supply a want which appeared to have been long felt in the place to which the Bill would immediately apply; but he wished to suggest for the consideration of the Honorable Member who had brought in

the Bill, whether, before the Bill was published, it would not be advisable to refer it to a Select Committee to consider whether the punishments prescribed in the Bill were adequate, and whether their severity might not be increased with advantage. The proposed punishments appeared to him very mild. Three days' solitary confinement or seven days' separate confinement or confinement in irons for four days were the severest punishments which could be given for the most flagrant breaches of Jail discipline falling under the Bill; but looking to the characters which were to be found in all Jails, and he believed he might add Houses of Correction, and to what was often the conduct of such characters, he doubted whether the punishments which he had just mentioned would always prove sufficient to secure the object aimed at in the Bill, namely, the maintenance of Jail discipline and of good order within the walls of the Jail. The last Section of the Bill gave power to the Governor-General in Council to extend the provisions of the Bill to any Jail established or to be established in any part of the British territories in India. But under the laws now existing in the three Presidencies, corporal punishment was included amongst the punishments which could be awarded for breaches of Jail discipline, and in the very able paper by the learned Advocate General of Bengal which was amongst the annexures of the Bill, it was stated at the end of paragraph 8 :—

"And the Justice is empowered to extend those periods, and to order corporal punishment and close and solitary confinement not exceeding one month. Similar provisions should, I think, be introduced into the Acts of the Legislative Council."

He concurred with Mr. Ritchie in thinking that corporal punishment should be added to the punishments to be awarded under the Bill. This might be done in Committee, but if the provision should be added in Committee after the Bill had been published, its republication would be necessary, and the consequence would be that the passing of the Bill would be greatly retarded, which was not desirable. For this reason he thought that, if the Council at large agreed with him in thinking that without corporal punishment the Bill would be incomplete and not likely to prove effective, the addition of the punishment to the penalties now contained in the Bill should be made at once.

THE VICE-PRESIDENT said, he had no objection to this Bill being referred to a Select Committee for the purpose of being amended previously to its being published. But he must confess he saw no necessity for so doing. He thought that some provisions were requisite regarding the discipline of the Great Jail. This Bill applied only to the discipline of the House of Correction, and he believed sufficiently provided for that object. The Great Jail however would continue to be under the authority of the Sheriff of Calcutta and the superintendence of his Officer the Governor of the Jail.

With regard to corporal punishment, he very much objected to pass a Bill allowing the local Government to frame rules for Prison discipline, and to allow the Chief Commissioner to award corporal punishment to Europeans or persons of any class for any breach of such rules. He objected entirely to such a provision. It had never been allowed hitherto, and no good reason had been shown why it should now be allowed. In cases of serious disturbances the prisoners were liable to be tried by the Criminal law of the country, and the prisoners concerned in the emeute which lately took place in the House of Correction had been so dealt with. For simple breaches of Prison discipline, he thought it would be sufficient to confine the offenders in irons, or to place them in separate or solitary confinement, as provided for in the Bill. If any further and more severe punishment were necessary, he would much rather that the offenders were brought up and punished by a Magistrate publicly, than that they should be punished inside of the Jail out of the eye of the public.

MR. ERSKINE said that, perhaps, the Honorable and learned Vice-President would explain what part of the Bill indicated that, if flogging were made a punishment under this Act, any breach of discipline might be punished in that way by the Chief Commissioner.

THE VICE-PRESIDENT said that Section II empowered the Commissioner or other Officer in whom the control of the House of Correction should be vested to take cognizance of all breaches of prison discipline, and to punish persons guilty of mutinous and violent conduct or of insolent language, or contumacious refusal to perform the work allotted to them. He (the Vice-President) had understood the Honorable Member for the North-Western Provinces to propose that corporal punishment should be awarded for any breach of prison discipline to be provided for by Section III, which authorized the local Government, from time to time, to frame rules for the proper discipline of prisoners in the House of Correction.

MR. HARINGTON said in explanation, that the breach of Prison discipline might consist in mutinous or violent conduct as described in Section II of the Bill, and it was cases of that nature which he had in view when he stated it as his opinion that the punishments proposed in the Bill were not sufficiently severe. Whether the Commissioner of Police should have power to award corporal punishment, was a distinct question into which he had not gone. If a Committee were appointed to consider the Bill, as suggested by him, before the Bill was published, one of the points for their consideration would be, to whom the power of passing a sentence of corporal punishment, when that punishment might be awarded, should be given.

THE VICE-PRESIDENT said, the Honorable Member for the North-Western Provinces had referred to that part of the opinion of the Advocate General, in which he alluded to the Code of Prison Regulations in England sanctioned by Parliament in 1823. He (the Vice-President) would read what the Advocate General had said on the subject. He said :—

"I think it very desirable that Rules for the regulation of Criminal Jails, and for enforcing Prison discipline in regard to Europeans, and to persons sentenced to imprisonment with hard labor, or to penal servitude, by the Courts established by Royal Charter in all parts of India, or by Courts Martial, should be framed, and should, when sanctioned by the Supreme Government, be embodied in an Act of the Legislature, and that power, from time to time, to frame additional Rules, or to sanction such Rules, when made by the Magistrate of the place, in concurrence with the Sheriff or Officer vested by law with the charge of the Prison or Jail, should be expressly conferred on the Government by such Act. A similar course has been adopted in England since 1823, when a general Code of Prison Regulations (see 4 Geo. IV. c. 62) was sanctioned by Parliament, while power to pass additional Rules, with the sanction originally of the Chief Justices and Judges of Jail Delivery, but subsequently of the Secretary of State, was conferred on the Justice of the Peace in Sessions. Summary and appropriate punishments for breach of those Rules, and for refractory conduct, are provided for by the Act (Sections 41 and 42.) In minor cases, and cases of urgency, the Keeper of the Prison is expressly authorised to confine refractory prisoners in solitary cells and keep them on bread and water, though not for more than three days, and to put them in irons, though not for more than four days, without the order of a Justice. And the visiting Justice is empowered to extend those periods, and to order corporal punishment and close and solitary confinement not exceeding one month. Similar provisions should, I think, be introduced into the Acts of the Legislative Council."

He had understood the Honorable Member for the North-Western Provinces to recommend that, for any breach of the Rules of Prison discipline, corporal punishment should be awarded, which certainly was not in accordance with the suggestion of the Adocate General. Even in cases of mutinous or refractory conduct or contumacious refusal by a prisoner to perform the work allotted to him, it appeared to him (the Vice-President) that placing the offender in irons or solitary or separate confinement was sufficient, and that prisoners guilty of offences under the Penal Code should be brought before a Justice of the Peace and publicly dealt with. He was not aware of any case of serious

disturbance up to the time of the late emeute, or that any one had ever suggested that corporal punishment was necessary for the enforcement of Prison discipline.

MR. SETON-KARR said that he had no objection whatever to the proposal of the Honorable Member for the North-Western Provinces, to refer the Bill to a Select Committee before publication of the Bill. With regard to the question of corporal punishment, he had at first included it in the punishments mentioned in Section II, for mutinous conduct, insolent language, and refusal to work. But on second thoughts, he had struck it out. In any case, he was of opinion that the point of corporal punishment should be distinctly settled in the law. If included, it should be so in Section II. It should not be left to the general authority proposed to be vested in the Government to provide for the minor breaches of discipline as mentioned in Section III, and for the general order and regularity of the Jail. With this view he suggested that the Bill be referred to a Select Committee, by which any amendment or extension of the enactment could be considered.

The Motion was then put and carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

SIR CHARLES JACKSON moved the introduction of the following new Sections after Section 310 :—

"The Court, at the close of the evidence on behalf of the accused person if any evidence is adduced on his behalf, or otherwise at the close of the case for the prosecution, may put any question to the accused person which it may think proper. It shall be in the option of the accused person to answer such question.

The accused person or his Counsel or Agent may, at his option, address the Court at the close of the case for the prosecution, or at the close of any evidence that may be adduced on his behalf, or, if any question shall be put to the accused person by the Court, after such question has been so put."

Agreed to.

SIR CHARLES JACKSON moved the introduction of the following new Section after Section 311 :—

"If any evidence is adduced on behalf of the accused person, or if he answers any question put to him by the Court, the prosecutor or the Counsel or Agent for the prosecution shall be entitled to a reply."

Agreed to.

MR. HARINGTON said, while they were on this part of the Code, he would ask the attention of the Committee again to the Section immediately preceding the one which they had just settled. On Saturday last they had agreed to strike out from Section 309 the words "whose death is the subject of enquiry." The effect of this omission would be to let in the evidence of any dying person to whatever it related, and without any regard to time. They were thus going far, very far, beyond the English law, which he believed he was correct in saying allowed the declaration of a deceased person to be received in evidence only when the death of such person was the subject of enquiry. It might be open to doubt, whether they were right in thus extending the English law, and in making it applicable to all dying declarations; but he would not again raise that question. The object which he had now in view in addressing the Committee was to suggest for their serious consideration whether, supposing the Section to remain general as it at present stood, some safeguard should not be introduced, and whether, instead of trusting entirely to the memory of witnesses as to what a dying person had said, they ought not to require that the declaration, to be admissible as evidence, should be in writing, and that the writing should be attested by witnesses. He considered some provision of this kind to be absolutely necessary by way of precaution. No doubt written statements, purporting to be the

dying declarations of deceased persons, might be fabricated, but this would be less easy than fabricating evidence as to what a dying man had said, and mere failure of memory without any improper motives might often lead to very serious misrepresentation. He begged, therefore, to move that the words "if taken down in writing, and the writing be attested" be inserted in the Section after the word "person" in line 2.

MR. ERSKINE said, he did not feel that he could acquiesce in the proposed amendment. The question now before the Council related, not to the value or effect, as evidence, of the contents of a dying declaration, but to the nature of the proof to be required in any case of the fact that any statement was or was not the declaration of a dying man. He (Mr. Erskine) was not prepared to enact that no evidence of this fact, except written evidence, should be accepted in our Courts. A dying declaration might be made in presence of a hundred villagers, who had no interest in deposing untruly regarding it. It might be made in presence of many most credible and intelligent witnesses, who nevertheless had no writing materials at hand. It might be made in presence of the Magistrate himself. But the Honorable Member for the North-Western Provinces proposed that in all such cases the dying declaration should be inadmissible in evidence, if it were not offered in the form of a written and attested statement. He (Mr. Erskine) did not consider that such a rule would conduce to the ends of justice. The true principle, he believed, was the general one—that all evidence of this fact, as of other facts, should be admitted *primâ facie;* and that the appreciation of such evidence, whatever it might be, should be confided to the Court to whom it was given. A dying declaration, of course, would always be received and weighed with caution; and so would oral evidence to prove that any statement had really been made by a dying man.

THE CHAIRMAN said, he confessed it appeared to him that the introduction of the words proposed by the Honorable Member for the North-Western Provinces might prevent dying declarations from being given in evidence at all, in cases where it might be of the utmost importance to give them; and, on the other hand, that the safeguard proposed was no safeguard in substance, but only a safeguard in appearance. For instance, take the case put by the Honorable Member for Bombay. A man was dying on the road, and a Magistrate was going past him. The Magistrate had no paper or pen and ink with him, and the man made his declaration and died. The Magistrate could not give evidence according to the proposed amendment. Suppose the Magistrate and two or three gentlemen of the highest credibility were present at the time the declaration was made, and were to make a statement on oath that the evidence offered was the substance of the dying man's declaration; but because that evidence was not written down before the man died, therefore it was to be inadmissible. On the other hand, how easy would it be for persons to bring forward a dying declaration reduced into writing and duly attested, and say that the dying man had made that statement, and they had written it down before his death? Why, you saw daily in Courts of Justice writings brought forward in that way and attested by witnesses, which you were forced to believe until, upon cross-examination, their proper character was discovered. Therefore, he thought that declarations of this sort, though reduced into writing and though attested by witnesses, would be no security at all. Suppose a dying declaration were required to be written down by one person and signed by at least another; it would be always necessary, in order to give a dying declaration in evidence, that at least two persons should be present at the time it was taken. He thought that the introduction of the proposed words would throw great difficulty, and was fraught with no essential benefit, in the administration of justice.

Then with regard to dying declarations in England being admissible

only in cases of homicide where the circumstances of the death were the subject of the declaration, he confessed he did not see the principle on which that rule had been made. It was a principle which had been handed down from case to case, and that, he thought, was the only reason why it was still acted on. He would read the following passage from Roscoe's Criminal Evidence, to show what the English law on the subject was :—

"It is a general rule, that dying declarations, though made with a full consciousness of approaching death, are only admissible in evidence where the death of the deceased is the subject of the charge, and the circumstances of the death is the subject of the dying declarations. * * * * Therefore, where a prisoner was indicted for administering savin to a woman pregnant, but not quick with child, with intent to procure abortion, and evidence of the woman's dying declaration was tendered, Mr. Justice Bayley rejected it, observing that, although the declarations might relate to the cause of the death, still such declarations were admissible in those cases only, where the death of the party was the subject of inquiry. * * * *A man having been convicted of perjury, a rule for a new trial was obtained, pending which, the defendant shot the prosecutor, who died. On showing cause against the rule, an affidavit was tendered of the dying declarations of the prosecutor, as to the transaction out of which the prosecution for perjury arose; but the Court were of opinion that this affidavit could not be read. * * * * So evidence of the dying declarations of the party robbed has been frequently rejected on indictments for robbery. * * ** * The following case seems rather an exception to this rule. The prisoner was indicted for poisoning John King. The poison was administered in a cake on which the deceased breakfasted, and was immediately taken ill, whereupon he told his son not to eat the remainder of the cake. His maid-servant who was present, and who had made the cake, said she was not afraid of it, and she proceeded to partake of it, and was in consequence poisoned, and speedily died. Her dying declarations (made after she knew of her master's decease), as to the manner in which she had made the cake, and that she had put nothing bad in it, and that the prisoner was present eating his breakfast at one end of the table, while she was making the cake at the other, were tendered in evidence on the part of the prosecution. An objection to their admissibility was taken for the prisoner, and Hutchinson's case (*Supra*) was cited. Mr. Justice Coltman, after consulting Baron Parke, expressed himself of opinion, that as it was all one transaction, the declarations were admissible, and accordingly allowed them to go to the Jury; but he said he would reserve the point for the opinion of the Judges. The prisoner, however, was acquitted."

Now these were refinements of the English law. Were all these refinements to be introduced into the Mofussil Courts where the parties had not the authorities to refer to? He thought that, in making a law for this country, we ought to make it intelligible upon some principle. If a principle was safe in reference to one case, it was safe in reference to another. He would, therefore, lay down the principle that when a man made a dying declaration, if he believed at the time that he was about to die although he might entertain hopes that he might recover, the declaration ought to be received in evidence, whether it was made in the presence of the accused person or not. That, he believed, was entirely a correct principle. If it was not a safe principle, it ought not to be admitted at all; but if it was admitted in one case, it ought to be admitted in all cases.

Then the English law, in those cases where it was admitted, did not require that a dying declaration should be reduced into writing.

For these reasons he objected to the proposed amendment, and thought that its adoption would introduce a principle which would provide no safeguard; whereas the principle of the Section, as it now stood, was preferable, namely, of admitting dying declarations in all cases and leaving it to the Judge in each case to give such credence to a declaration as he might find it to deserve after it had been subjected to cross-examination.

SIR CHARLES JACKSON said, when this matter was last before the Committee, he was the only Member who doubted the expediency of admitting in evidence dying declarations when the death of the deceased person was not the subject of enquiry. He did not, however, entertain a strong opinion on the subject, and did not call for a division, but merely met the question with a negative. He must say, therefore, that if he thought the amendment proposed by the Honorable Member for

the North-Western Provinces amounted to any safeguard, he should gladly support it. But for the reasons given by the Honorable and learned Chairman, he (Sir Charles Jackson) thought that it was no safeguard. There was no difficulty in this country to get any amount of witnesses to prove any document. He would rather trust to another safeguard, and that was the common sense of the Judge and of the Jury, if a Jury was called. He apprehended that the Judges would always receive such testimony with great caution, and he trusted they would be competent to sift it. He thought that it would strike most Judges that nothing would be easier than to put words into a dead man's mouth when he could no longer contradict the witnesses, and that all Judges and all Juries would be very careful before they attached any weight to such evidence.

MR. HARINGTON said, after what had fallen from the Honorable and learned Chairman and the Honorable and learned Judge (Sir Charles Jackson), he would not press his Motion, but, with the permission of the Committeee, would withdraw it.

The Motion was accordingly by leave withdrawn.

MR. HARINGTON moved the omission of Sections 239 and 239*a*, and the substitution of the following :—

"If, in the course of a trial before a Subordinate Magistrate, the evidence shall appear to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try, or for which he is not competent to commit the accused person for trial before the Court of Session, he shall stay proceedings, and shall submit the case to the Magistrate to whom he is subordinate. Such Magistrate shall either try the case himself or refer it to any Officer subordinate to him having jurisdiction, or he may commit the accused person for trial before the Court of Session. In any such case, such Magistrate or other Officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects, as if no proceedings had been held in any other Court.

If in any case tried by a Subordinate Magistrate having jurisdiction, in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than he is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate to whom he is subordinate, and such Magistrate shall pass such sentence or order in the case as he may deem proper and as shall be according to law. In any such case, the Magistrate to whom the proceedings are submitted, may examine the parties, and recall and examine any witness who shall already have given evidence in the case, and he may call for and take any further evidence.

Nothing in the last preceding Section shall be held to prevent the Subordinate Magistrate in any such case as is therein described, if such Magistrate is empowered to hold the preliminary enquiry into cases triable by the Court of Session, and to commit persons to take their trial before such Court, from committing the accused person for trial before the Court of Session, instead of finding him guilty. If the Subordinate Magistrate shall be of opinion that the accused person should be committed for trial before the Court of Session, he shall proceed in accordance with Chapter XII of this Act for conducting the preliminary enquiry in cases triable by the Court of Session."

Agreed to.

MR. HARINGTON moved that the Clerk of the Council be authorized to substitute the words "Subordinate Magistrate" for the words "Subordinate Court" throughout this Chapter.

Agreed to.

INCOME TAX.

SIR BARTLE FRERE said, before the Council adjourned, he desired to remove what appeared to him to be a misapprehension, and of giving his Honorable friend opposite (Sir Charles Jackson) and the Honorable and learned Vice-President, an opportunity, of which he felt sure they would be glad to avail themselves, of correcting a misrepresentation. On referring to the speech with which he introduced the Bill for amending the Income Tax Act, he found that he had expressly stated—

"We propose that the Bill should not be general ; but should be applied only to those Districts where Government may be satisfied that it would not act unjustly either to the public revenue or the tax-payers. *We propose to ask for power to continue it for future years, should it be found to work well.*"

He was sure that that passage of his speech would satisfy the Honorable and learned gentlemen that he did not attempt to draw the Council farther than he proposed at starting

when he asked them to suspend the Standing Orders, and that he had not slipped into the Bill an important provision of that kind after it had been introduced.

SIR CHARLES JACKSON said that his objection was not based upon that ground. He had only referred to the substance of the Section, and had pointed out that it would in effect be a frittering away of the Income Tax.

THE VICE-PRESIDENT explained that what he meant to say was that, if he had understood that it was intended to introduce such a Clause, he should have voted against the suspension of the Standing Orders for the purpose of passing the Bill with that Clause without a republication of the Bill.

SIR BARTLE FRERE said, he only wished to set himself right with the Council, and to show that he had given ample notice of the intention of Government.

The Council adjourned for ten minutes.

CRIMINAL PROCEDURE.

The Council having resumed its sitting, the consideration of the Criminal Procedure Bill was proceeded with.

MR. HARINGTON moved the introduction of the following as a new Chapter after Chapter XIX :—

"OF LOCAL NUISANCES.

1. The Magistrate of the District or other Officer exercising the powers of a Magistrate may cause unlawful obstructions and nuisances to be removed from thoroughfares and public places, and may suppress or cause to be removed to a different place, trades or occupations injurious to the health or comfort of the community, and may prevent such construction of buildings and such disposal of combustible substances as may appear to him likely to occasion conflagration, and may cause the removal of buildings in such state of weakness as by the probability of their falling may appear to him to expose persons passing by to danger.

2. The Magistrate or other Officer as aforesaid shall, in the first instance, issue an injunction containing such directions as he may consider necessary. Such injunction shall, if practicable, be served personally on the person concerned; but if such personal service is found to be impracticable, the injunction shall be notified by proclamation, and a written notice thereof shall be set up at such place or places as may be best adapted for conveying information to the person concerned. If such injunction be not obeyed, the Magistrate or other Officer as aforesaid may compel observance thereof, and punish disobedience by a fine not exceeding two hundred Rupees, or by imprisonment without labor for any period not exceeding one month. If the Magistrate or other Officer as aforesaid find it necessary to incur expense in removing noxious or dangerous articles or buildings, it shall be lawful for him to sell the same or their materials by public auction, in order to defray the charge, delivering any surplus that may remain to the owner. The Magistrate or other Officer as aforesaid may, under the like penalty, compel the owner of any tank or well adjacent to any public thoroughfare to fence the same in such manner as to prevent danger to the public arising therefrom.

3. Any person who is affected by such injunction or written notice as is above described, if he shall object thereto, may claim, by written Petition, to be presented to the Magistrate or other Officer as aforesaid within the period of ten days if reasonably practicable, if not, within the shortest reasonable further time from the receipt of such injunction or the publication of such notice, that a Jury may be appointed to try and decide the question. On receiving such Petition, the Magistrate or other Officer as aforesaid shall pass order thereupon for the appointment of a Jury which shall consist of not less than five persons, whereof the President and one-half of the other Members shall be nominated by the Magistrate or other Officer as aforesaid from the residents in the vicinity, and the remaining Members shall be nominated by the party petitioning. The Magistrate or other Officer as aforesaid shall suspend the further execution of the injunction or order pending such enquiry, and be guided by the decision of such Jury, which shall be according to the opinion of the majority. If the Petitioner shall, by neglect or in any other way, prevent the appointment of a Jury, or if from any cause the Jury so appointed shall not decide and report within a reasonable time to be fixed in the order for their appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate or other Officer as aforesaid; and if from any of the above causes no decision be made by the Jury, the order of the Magistrate or other Officer as aforesaid shall take effect in the same manner as if no objection had been made to it."

THE CHAIRMAN observed that this Chapter related not only to Procedure, but also to punishments which were already provided for by the Penal Code. He thought that the parts which related to punishments had better be left out of this Bill.

After some conversation, the Chapter was withdrawn with a view to its being re-cast.

Chapter XXV next came under consideration.

Sections 333 and 334 were passed as they stood, the latter after some discussion.

Section 331 of the preceding Chapter, which empowered the Sudder Court to call for and examine the records of any case tried by any Court of Session, and which was ordered to stand over for the purpose of being considered in connection with Section 334, was passed after a verbal amendment.

Section 335 was passed as it stood.

MR. SETON-KARR moved the introduction of the following new Section after Section 335 :—

"In all Criminal cases in which the Magistrate of the District, or other Officer exercising the powers of a Magistrate, shall pass a sentence of imprisonment not exceeding fifteen days, or of a fine not exceeding fifty Rupees, no appeal shall be allowed. In cases of theft, if the sentence passed by such Magistrate or other Officer be a sentence of imprisonment not exceeding two months, no appeal shall be allowed."

He said—Sir, I must request Honorable Members, in reading this amendment, to substitute 'one month' for 'two months,' in the last line but one.

My object in proposing it, is to keep the law of appeal exactly where it is now. The Officers who will try these cases, without appeal, only attain full powers after passing two severe examinations in law, languages, and procedure, which form as good a guarantee for efficiency and experience as any ordeal of this nature can reasonably be supposed to give.

In framing this amendment, I have taken no notice of the provisions of the old law which, in particular cases, allows a fine of higher amount than fifty Rupees to be inflicted without appeal. The law says,—

"Unless the offender is a Zemindar, or independent Talookdar or other actual proprietor of land, paying an annual rent to Government of more than 10,000 Rupees, or a proprietor of Ayma land paying a quit rent to Government of 200 Rupees per annum, or of Lakhiraj land the annual produce of which is above 1,000 Rupees; in which cases the fine may be 200 Rupees."

This provision is seldom resorted to and almost obselete; so I have not thought it necessary to renew it.

I would further observe, Sir, that many of the Officers who will try these cases are Principal Sudder Ameens, and men of considerable ability. But the necessity for allowing appeals will be considerably decreased by the expected severance of the Executive from the Judicial functions in the case of Magisterial Officers, which severance will be gradually carried out over Bengal. Still, hitherto, the kind of cases in which the new law, as it now stands without the amendment, will take away the power to appeal, are not of the kind which necessarily set the professional activity of the detective and Police Officer in chronic opposition to the cool and impartial bearing which he should maintain as a Judge. The commonest assaults, bazar squabbles, and petty cases of theft, of which the Magistrate knows nothing whatever till they are brought into Court ripe for decision, are the cases which fall under this category. No one that I know of, has protested against the exercise of the authority which I propose to retain, and I believe that the most experienced Commissioners, the ablest Magistrates, and the most impartial Judges would demand its continuance. Now, Sir, if it should be taken away, I believe the consequence would be that authority would be weakened, appeals multiplied, and business increased. At all times natives are anxious to protract litigation, and if the Judge should be gifted with a fatal facility for generating grievances, for inviting complaints, and finding flaws in evidence which, after all, he must judge of, not from the living witness, but from the dead record—why, Sir, the business would be absolutely interminable! Or should the native community perceive hostility to exist between the Judge of the appellate and

the Judge of the lower Court, or even imagine it to exist when it did not, the consequences would be exactly the same. I say that it is perfectly easy to conceive the existence of a long standing dispute between two rival Zemindars, which should take the form, not of violent affrays or of sanguinary breaches of the peace, which are now, happily, of rare occurrence, but of complaints and counter complaints between the dependants and retainers of one party or the other. In such a case the Magistrate, with a Judge of a peculiar temperament, could not be sure of fining any man five Rupees, or of imprisoning him for a week, or of calling on him for recognizances, without having his authority appealed against and consequently weakened. I trust that in this point I shall have the support of the Honorable Member for the North-Western Provinces, who has had much greater experience of the working of the old system in all its branches from the lowest to the highest, than I have had; but my great argument is, that in a case like this, the *onus probandi* lies upon the party who would introduce the change in the system of appeal, and that no cause whatever is made out. Indeed, the tendency now in legislation is rather to limit appeals, and to go back in the other direction. I trust, therefore, that the Council will see fit to pause before they take away a power which was conferred with forethought, which has been exercised with discretion, and which, over a long series of years and a large tract of country, has certainly contributed to maintain the wholesome authority of the established tribunals, and to assert that supremacy of law which we all desire to uphold.

MR. HARINGTON said that although the Royal Commissioners by whom the present Code was prepared, seemed to have taken a different view of the question now before the Committee from the Honorable Member for Bengal, and had proposed to give an appeal from every sentence, whether passed by a Magistrate exercising full powers, or any subordinate Magistrate, he was inclined to agree with the Honorable Member for Bengal, and to consider it unadvisable to alter what was the present law and practice on this side of India. Indeed, he was quite prepared to go farther, and when a sentence of imprisonment was passed by an Officer exercising the full powers of Magistrate, to extend the period which should bar an appeal, from fifteen days to one month, without reference to the character of the offence for which the imprisonment was awarded. There were many offences other than theft, in respect of which he thought the limitation proposed by him would be equally proper, and he saw no reason why theft should be singled out, and why the distinction contained in the proposed amendment should be confined to that offence. He should prefer to see the amendment made general.

THE CHAIRMAN said, he should support the Motion of the Honorable Member for Bengal. The only question was whether, as shown by the Honorable Member for the North-Western Provinces, the proposed Section should not be made applicable to many cases besides theft. For instance, in similar cases of criminal misappropriation of property, he thought there should be no appeal. In point of principle it appeared to him that all cases punishable with imprisonment not exceeding one month, or fine not exceeding 50 Rupees, should be included. He should also like to introduce cases triable by the Sessions Judge who was quite as competent to decide without appeal as a Magistrate.

The Section was ultimately passed as follows :—

"In all criminal cases in which a Court of Session or a Magistrate of a District, or other Officer exercising the powers of a Magistrate, shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty Rupees, no appeal shall be allowed."

Section 336 provided as follows :—

"Any person convicted on a trial held by an Officer not exercising the powers of a Magistrate, may appeal to the Magistrate of the District, or other Officer exercising the powers of a

Magistrate, who shall have been empowered by the Government to hear such appeals."

MR. FORBES moved the addition of the words, "to whom the Officer to whom the appeal may be brought is subordinate."

After some discussion, the Motion was by leave withdrawn; and the Section was passed after the substitution of the words "exercising powers less than those of a Magistrate," for the words "not exercising the powers of a Magistrate."

MR. ERSKINE moved the introduction after Section 336 of the following new Section prepared by the Honorable gentleman lately the Member for Bengal (Mr. Sconce), who, however, had no opportunity of himself moving its adoption:—

"Any person convicted by any Civil Court, under Chapter X of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, subject to the rules provided in Sections 339, 340, 341, 342, 343, and 344 of this Act. Petitions of appeal under this Section, if presented to any District Court, must be presented within thirty days immediately following and exclusive of the day on which the sentence or order appealed against is passed. Petitions of appeal to the Sudder Court must be presented within six weeks calculated as above. The Sudder Court and District Court may admit an appeal after the time herein provided, on sufficient cause shown."

The object of the amendment was, in cases falling under Chapter X of the Code, to allow parties to make appeal from orders passed by any Civil Court to the Court to which the decisions of such Court were ordinarily appealable. He (Mr. Erskine) was glad to express a general concurrence in the object which the new Section was intended to secure, and therefore to bring the Section to the notice of the Committee. But he was not quite sure that it did not go somewhat too far. He was disposed to think that some distinction should be made between penalties imposed by Courts for contempt of Court committed in their presence, and penalties imposed for other offences under Chapter X. The Honorable Member for the North-Western Provinces had drawn his attention to a proviso in the Code prepared by that Honorable Member and Mr. Mills, which seemed to him (Mr. Erskine) to be very reasonable, and which he should be glad to see added to the new Section. The proviso was to the effect that, in cases of contempt committed in open Court, the order of the Court should state the facts constituting the contempt, and that the correctness of such statement should not be open to question in appeal.

THE CHAIRMAN observed that, as Chapter X was now framed, the Civil Courts might send persons whom they might punish under that Chapter, to the Criminal Jail, even though they might be European British subjects. He thought that this was a power which these Courts should not possess, and he should therefore move the addition of the words "in the Civil Jail" at the end of Section 134.

MR. HARINGTON said that the Code did not specify whether the imprisonment was to be in the Civil or Criminal Jail. With regard to the addition proposed by the Honorable and learned Chairman, it must be borne in mind, that the imprisonment for some of the offences mentioned in Chapter X, might be rigorous, that was with hard labor, which could not be given in the Civil jail.

THE CHAIRMAN then moved an addition to the Section proposed by Mr. Erskine, to the effect that Civil Courts, when acting under Chapter X of the Code, should be deemed Criminal Courts within the meaning of the Code.

SIR BARTLE FRERE asked, what was the object of the proposed addition?

THE CHAIRMAN said that the Bill now before the Council was one entitled a Bill to simplify the Procedure of the Criminal Courts in the Mofussil. A certain Section in the beginning of the Bill exempted certain classes from the jurisdiction of those Courts, and he had all along understood that the Courts mentioned throughout the Bill were Criminal Courts. When he found, however, that the right of appeal was to

be allowed to persons convicted by a Civil Court, he was anxious to have it carefully defined that Civil Courts pronouncing such sentences were in reality Criminal Courts within the meaning of the Code, and should be treated as such. It was not the power to fine that he objected to, but the imprisonment in the Criminal Jail.

SIR BARTLE FRERE wished to know whether the proposed addition would make any change in the law as it now stood ?

THE CHAIRMAN said, he objected to any of the Courts in the Mofussil having the power of imprisoning European British subjects in the Criminal Jail. At present there were no Jails in the Mofussil suitable for the confinement of European criminals. If the Chapter were passed as it now stood, the Mofussil Courts would have larger power over Europeans than was possessed by the Supreme Court, to which alone European British subjects were amenable for criminal offences. The Supreme Court, though it might punish for contempt, could not send the person convicted to the Criminal Jail. If he were to be punished under the Penal Code, he would have to be tried by a Jury as in all other Criminal cases. In order therefore to avoid all doubt as to the construction to be put upon this Bill in consequence of the introduction of the words "Civil Courts," he wished to move his addition to the amendment proposed by the Honorable Member for Bombay.

MR. ERSKINE suggested that the proposed addition and the interpretation placed on a former Section of the Code would exclude altogether the jurisdiction of the Courts, both Civil and Criminal, as regards European British subjects in cases of contempt. He thought he had read a letter published sometime ago in one of the newspapers, in which the Advocate-General advised an Officer—in the Punjab, he (Mr. Erskine) believed—that there was in every Court of record an inherent power to punish for contempt committed in respect to itself; and this power—unless his memory failed him—was held to extend even to European British subjects in a Non-Regulation District.

MR. HARINGTON concurred with the Honorable Member for Bombay as to the effect of the addition to the Section proposed by the Honorable and learned Chairman. Under that addition, taken with what had fallen from the Honorable and learned Chairman, no Civil or Criminal Court in the Mofussil would be able to punish a European British subject for contempt.

THE CHAIRMAN said, he doubted the correctness of the view taken by the Honorable Members for Bombay and the North-Western Provinces. But, if it was correct, he thought a separate Act might be passed, or any Honorable Member might propose to introduce a Section to meet such cases. He did not pledge himself to support the Section that might be proposed until he knew what it was. He should move his amendment as a new Section, and if he carried the Motion, any Honorable Member might take what steps he thought proper. He could not consent to give the Courts in the Mofussil, in respect of European British subjects, the powers which they would be competent to exercise under the Chapter as it now stood.

MR. ERSKINE'S Section, without the addition of the proviso proposed by himself, was then put and carried.

THE CHAIRMAN moved that the following new Section be introduced after the above Section :—

"All Courts, when acting under Chapter X of this Code or under the last preceding Section, shall be deemed Criminal Courts within the meaning of this Act."

SIR BARTLE FRERE said that, as the law stood, it seemed to him that any Civil Court had power to send a European, guilty of contempt, to a Civil Jail ; but we were now asked to provide that, when such a Court dealt out such punishments, it should be looked upon as a Criminal Court, and *ergo*, that it should have no power of punishing any European guilty of such offence. That did not seem to him to be a reasonable proposition, and

he thought it better to leave the law as it now stood than to alter it in the manner proposed.

SIR CHARLES JACKSON said that the punishment provided by Chapter X for contempt of Court, was a penal proceeding, and ought to be incorporated as part of this Act. If so, ought not the Court dealing with it to be looked upon as a Criminal Court? It seemed to him that that was a natural logical sequence. The discussion now raised was substantially a revival of the discussion on the Black Acts, and he could not see why such a discussion should be revived.

SIR BARTLE FRERE said, he must beg the Honorable and learned Member's pardon for saying that this question had no connection whatever with the Black Acts. We were now asked to say that that which was a Civil offence should be made a Criminal offence, and the only result would be that it would be impossible to punish for that offence certain persons against whom the same power could now be exercised without challenge.

THE CHAIRMAN said that by Section 132, Chapter X, of the Bill it was provided that :—

"When any offence described in Chapter X of Act XLV of 1860 (The Indian Penal Code), except Section 181 or 182, is committed in any Court, Civil or Criminal, in contempt of such Court, or of the lawful authority of such Court, it shall be competent to such Court to take cognizance of the same, and to adjudge the offender to punishment as authorized by the Sections applicable thereto."

Now Section 183 of the Penal Code provided that—

"Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description, for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both."

According to this Section, if a Civil Court issued an order for sale, and a European resisted the order, he would be liable to be tried by that Court for that offence, and sent to jail for six months with hard labor, or fined a thousand Rupees. He certainly did think that that was introducing the Black Acts. It was merely by calling what was in fact a Court of Criminal Judicature a Civil Court, that certain Courts might exercise criminal jurisdiction which they were, by Section 4, expressly prohibited from doing. This was a Bill for simplifying the Procedure of the Courts of Criminal Judicature, so that all the Courts which acted under it were to be presumed to be Criminal Courts. Therefore, those persons who were already exempted from the jurisdiction of the Criminal Courts should continue to be so exempt; and, to remove all doubt on the subject, he proposed his Clause, which, he thought, would show clearly what the intention of the Council was.

MR. ERSKINE said, he would remark in the first place that the allusion to Section 183 of the Penal Code had also occurred to him, and he was prepared to introduce into this Act any such restriction on the power of the Civil Court as would prevent them from passing a sentence of imprisonment with hard labor. Then again, he was not sure whether, under the construction placed by the Honorable and learned Chairman on a former Section, a Civil Court would have power to pass a sentence, even of fine, upon a European. If that were so, then no Civil Court would have any power at all to punish a European for contempt of Court.

SIR BARTLE FRERE said, he should vote against the proposed amendment, as he thought the better way would be to leave matters as they now stood. It seemed to him also that the amendment went far beyond what any Honorable Member of the Council had looked for or expected. At the same time he must protest against its being thrown in his teeth, whenever he spoke about the Mofussil Courts, that he was trying to introduce the Black Acts by a side-wind. The power to punish for contempt was not a power peculiar to Indian Courts. It was a power vested in all civilized

Courts of Justice every where, and he could not see that, in introducing a provision of this kind, he was introducing any Black Act or any law which did not already exist.

SIR CHARLES JACKSON said, he did not know what his Honorable friend meant by saying that he had been charged with wishing to bring in a Black Act by a side-wind. He (Sir Charles Jackson) had made no such charge. What he had contended was that a Mofussil Civil Court should not be allowed to act as a *quasi* Criminal Court, and pass sentences and orders in cases of contempt which were sentences and orders of a Criminal Court, and yet not be treated as subject to the Code of Criminal Procedure. He thought it most unfortunate that the Black Acts should be brought to bear on this question. He had never charged the Honorable Member with any intention of the kind referred to, and he was very much astonished to hear him saying that he had done so.

THE CHAIRMAN said, he had never intended to throw in the Honorable Member's teeth that he was attempting to bring in the Black Acts by a side-wind. But the Honorable Member had said that the Black Acts had nothing to do with the question, and he (the Chairman) had tried to show how they had. He would draw the attention of the Council to how the case now stood. This Code of Procedure related to Criminal Procedure. The Penal Code provided for the punishment of certain offences committed by way of contempt in the face of the Court, and also for like offences committed at a distance ; and in these cases any Court, when dealing out such punishments, became a Criminal Court and ought to be dealt with as other Criminal Courts which had no jurisdiction over European British subjects. As an instance of an offence by way of contempt punishable with hard labor under the Penal Code, he had alluded to Section 183. Section 184 then provided that—

"Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both."

And Section 185 provided that—

"Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both."

Now these were offences not only in contempt of Courts of Justice, but also in contempt of public servants. Suppose any one at a public revenue sale hindered such sale by not carrying out his bidding, he would not be punished by the Board of Revenue or by a Civil Court, but probably by the nearest Magistrate or by some person who had Criminal Jurisdiction. If in any case a Civil Court was converted into a Criminal Court, it should be treated like all other Mofussil Courts which had no jurisdiction over European British subjects. Then it was said that no power at all was given to Civil Courts to punish Europeans for such offences. Some Clause might be introduced providing for this. But it was quite a different matter to make Europeans liable to be punished for contempt with three months' hard labor rather than not punish them at all. In the Supreme Court, if a person were guilty of a contempt of Court, he could now be sent to a Civil jail, while under the Penal Code he would have to be tried by a Jury and, if convicted, sent to work out his penal sentence in the House of Correction. In other words, when the Penal Code came into operation, the Supreme Court could only try a man by Jury, whereas, if the matter were to be left as it stood, the Mofussil Courts would possess a Criminal Jurisdiction over European British subjects far beyond that which could be exer-

cised by the Supreme Court; and therefore he said that it was a Black Act, notwithstanding all that had been urged by the Honorable Member of Government. In saying so, however, he did not intend to say that the Honorable Member was trying to introduce it by a side-wind.

MR. HARINGTON said that, in order to show that the Honorable Member for Bombay and himself were right as to the effect of the Section proposed by the Honorable and learned Chairman, he would read Section 4 of the Code which appeared to have been overlooked in framing Chapter X. The Section said,—

"The Criminal Courts shall have jurisdiction over all persons except such persons as by any Act of Parliament or by any regulation of the Codes of Bengal, Madras, and Bombay respectively, or by this or any other Act of the Government of India in Council, are or shall be exempted from their jurisdiction."

The exception contained in this Section would extend to all cases falling under Chapter X arising in any Criminal Court in which a European British subject was concerned, and if the Civil Courts were declared to be Criminal Courts when exercising jurisdiction under that Chapter, they equally with the regular Criminal Courts would have no power to punish Europeans for contempt. With regard to other offences, the effect of the Section proposed by the Honorable and learned Chairman, taken in connection with Section 4, would be to place European British subjects on a different footing, in respect of such offences, not only from the natives in the Mofussil, but also from their own countrymen in the Presidency towns; for it was preposterous to suppose that a European could be sent down to the Presidency to be tried by the Supreme Court when the only punishment to which he was liable was one or even three months' imprisonment with labor. They ought to look the matter in the face, and carefully to consider whether this would be right. It might be objectionable to subject Europeans to trial for such offences before the subordinate Civil Courts, but there seemed no reason why they should not be tried by the Zillah Judge or a Justice of the Peace. The Chapter, as it now stood, was framed by the Royal Commissioners, and it had been twice carefully and fully considered in Committee. If it went too far as regarded European British subjects, the parts considered objectionable might be struck out, but they should retain at least what related to contempts of Court. In respect of that offence, the Chapter, in so far as the question of jurisdiction was concerned, did not go beyond the present law. He would read the law in force. This was contained in Act XXX of 1841. It said—

"All persons whatsoever, whether generally amenable to the Courts of the East India Company or otherwise, using menacing gestures or expressions or otherwise obstructing justice in the presence of any zillah or city Magistrate, Joint-Magistrate, or other officer under a Magistrate empowered to try criminal cases, or any superior or inferior Civil or Criminal Court of the East India Company, shall be liable to be fined by the authority whose proceedings are obstructed, to any amount not exceeding 200 Rupees, or in case such fine be not paid, to be imprisoned for any period not exceeding one month."

This law had been in force twenty years. It applied alike to Europeans and natives. It was required for the protection of the Courts of Justice, whoever presided in them, and he had heard no sufficient reason for changing the law.

SIR BARTLE FRERE said that all he wished was that the same course should be pursued in these cases by the Civil Courts in the Mofussil as was pursued by the Supreme Court. He did not wish that they should have Criminal powers. He would have them act as Civil Courts; and if the Honorable and learned Vice-President would put his amendment in that form, he was perfectly willing to support it.

After some further discussion, the Chairman's Section was put, and

the Council divided upon it as follows :—

Ayes 2.	*Noes* 6.
Sir Charles Jackson.	Mr. Seton-Karr.
The Chairman.	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	Sir Bartle Frere.

So the Motion was lost.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR moved that the Bill "for the better enforcement of discipline in the House of Correction at Calcutta" be referred to a Select Committee consisting of the Vice-President, Sir Charles Jackson, and the Mover, with an instruction to submit a preliminary Report under the 62nd Standing Order.

Agreed to.

The Council adjourned.

Saturday, August 3, 1861.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.

INCOME TAX.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for limiting in certain cases for the year commencing from the 31st day of July 1861, the amount of assessment to the Duties chargeable under Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860)."

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from the Calcutta Trades' Association, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits.)

Also a similar Petition from Bankers, Merchants, and Traders, carrying on business in Benares in the North-Western Provinces.

THE VICE-PRESIDENT moved that the above Petitions be printed.

Agreed to.

THE VICE-PRESIDENT also gave notice that he would, on Saturday next, move the first reading of a Bill to amend the above Act.

SALTPETRE.

THE CLERK reported to the Council that he had received a communication from the Government of the North-Western Provinces, relative to the necessity of confining the eduction and purification of Salt to Saltpetre Refineries absolutely.

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill "to regulate the manufacture of Saltpetre and of Salt educed therefrom."

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS' SETTLEMENTS).

MR. FORBES presented the Report of the Select Committee on the Bill "to extend to the Straits' Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

PARSEES.

SIR BARTLE FRERE presented the Report of the Select Committee on the Petition from the Parsees of Bombay, with the Draft of a Code of laws adapted to the Parsee community.

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

The Order of the Day being read for the first reading of a Bill for the registration of Nij-jote and Khamar Lands, as well as of Ryotty tenures, involving the immediate possession of the soil for the purposes of cultivation, or for other purposes—

MR. SETON-KARR rose and said—

Sir, in moving the first reading of this Bill, I have no intention of promoting any animated discussion on that much vexed question, "the ownership of the soil." I have always thought that there was much truth in a remark made by the able author of "Modern India," to the effect that many rights, seemingly incompatible, could co-exist in one and the same property. I believe that, however undefined and inconsistent with each other such rights may appear on a cursory investigation, yet to one who will take the trouble to enquire patiently into the subject, they come out clear of entanglement, not inconsistent with each other, and capable of well defined and distinct identification. I shall not touch therefore on the subject of ownership, except so far as is absolutely necessary to illustrate the scope and object of this Bill. Honorable Members must be aware that whatever be the character of the superior tenure, certain inferior rights are valuable and are prized, because they place their possessor in direct connection with the soil. Such connection is obtained by Zemindars either by their holding Nij-jote or Khamar lands, which correspond, on the whole, with our Home Farms in England; or by lapsed ryotty tenures which, under the statute and the common law of the country, revert to the Zemindar whenever ryots die or abscond; or by their leasing or purchasing similar tenures from the ryots themselves. It is also a fact beyond dispute that Zemindars are in the habit of purchasing such inferior tenures when put up for sale even within their own Zemindaries, in order to the cancelment of the lower tenure; and it is equally certain that Zemindars, even the most powerful and influential in the whole country, are accustomed to purchase the holdings of ryots within the estates of other persons, sometimes for the attainment of their own legitimate ends, sometimes for purposes of annoyance and retaliation. In such cases the Zemindar, whatever be his means or influence, assumes literally the status of a ryot, and is subject to the same conditions as a ryot with regard to measurement of the land, and to the enhancement and payment of rents. I have known a case within the last year where Europeans, amongst the most powerful landholders in Bengal, have been found, on the expiry of the lease of the superior tenure which they held from natives, to be in possession of some score of ryots' holdings, which were not terminated with the expiry of the above lease. Not that I mean, in saying this, to impute the slightest blame. They did nothing but what is ratified by universal custom, and is hourly practised by Natives and Europeans all over the country, without being opposed to the statute law. On the other hand, some questions do constantly arise regarding the power of the ryot to alienate or transfer such tenures without the consent of the Zemindar, and such questions must be decided on the facts with reference to their merits in each particular case; but on the other hand, many of such ryots' holdings are transferable, and are transferred, have a marketable value, and are constantly put up to sale and execution on decrees. These, then, are the kind of tenures to which I would draw attention, as conferring on their possessor the dominion of the soil. What then is the difficulty which has arisen concerning them? Why, in the autumn of last year, consequent on the unhappy dissensions between Planters and ryots, disputes arose which took the form, not of Planters maintaining that ryots under contract were bound to sow certain lands with Indigo, but that certain lands belonged to the factory, and were to be cultivated by factory servants or by hired labor. On the other hand, the Ryots contended that the said lands were their own holdings, and were never leased to or held by

the factory at all. Now, on these lands the Planters carried on a cultivation well known as Nijabad, which was a very legitimate field for mercantile enterprise, and against which not a single complaint had ever been made. On this there were numerous claims to possession which involved the adjudication of several intricate questions, both of fact and of law. However summary might be the procedure under Act IV of 1840, something more summary still was seen to be required. There were documents to be produced and witnesses to be summoned: the number of cases were considerable; and though extra officials and Appellate Courts were appointed to decide such cases, the critical time for sowing had passed away before adjudication could be made to one party or another. Moreover, the eventual issue of these pending cases was, in many instances, in favor of the Planter. This being the case, the Lieutenant-Governor had thought it desirable that some plan should be introduced to meet the difficulty, and this is the object of the present Bill. I have explained the nature of tenures. I have stated the difficulties regarding them, and I now come to the remedy which it is proposed to apply. The object of the law will be to settle objections in regard to possession before the sowing season passes away; to enable the police to interfere summarily and maintain the holder of such lands in possession; and to secure lawful holders against unjust and frivolous claims. With this view we propose to allow Collectors, and Sub-Divisional Officers having the powers of a Collector, to receive Petitions on eight annas Stamp Paper for the registry of all tenures which involve the dominion or the possession of the soil. The Petition must state the area and the boundaries of the land to be registered, as well as the village in which the tenure is situated. On this the Collector will issue a notice at the village in question, and also at the Thannah or local Police Station, calling on any objectors to prefer their objections within fourteen days; if no one appears, the certificate will be granted. If any objector appear within the time stipulated, the Collector or other Officer shall hold a summary enquiry. If the objection seems captious, or vexatious, the registry will be allowed. If, on the other hand, it is shown that the title and the mere right to alienate, or any share in the holding, is in dispute, the Collector will refuse to register, and will refer the parties to the Civil Court. The certificate, when granted, should contain the same particulars as the Petition, namely, the area and boundaries, the position of the land in the village, and the name of the person from whom it is derived. A registry book would be maintained in each office, and a registration fee of not more than two Rupees would be demanded in each case. Then we propose to empower the Police, on the production of any such certificate, to maintain the person producing it *in possession* against all the world. It is not proposed by this enactment to alter any title, or to confer any title. It is merely intended to enable the Planters, European or Native, not to lose the critical moment for sowing. I am fully prepared to hear objections started against this Bill; and it will be said, no doubt, that there are already two modes of registration in force, namely, the law for the Registration of Deeds and Act XI of 1859. But the Registration of Deeds regards titles only, and even here no enquiry is made, as to the title, still less as to the party in possession. As to Act XI of 1859, Section 43 provides that—

"Leases of lands of the description specified in the fourth exceptional class in Section 37 may be registered at the option of the holders in the manner and under the rules hereinbefore provided for the registry of Talookdarry and other similar tenures."

Now, Sir, what are the lands of the exceptional class alluded to? They are those mentioned in the fourth Clause of Section 37, namely,

"Leases of lands whereon dwelling-houses, manufactories, and other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk."

But the Registration under this Act is merely intended for security of title. It guards the under-tenure from extinction when the superior tenure is put up for sale for arrears of revenue; but it guarantees no sort of possession to any one, nor does it afford the means of settling disputes as to possession between eventual rival claimants. The registration of a lease to A. is no evidence for or against B, who may claim, at a future time, to be in possession of the tenure. Nor is it of any use in determining subsequent transfers. Indeed, it is of no use to determine the rights of rival claimants, even at the very time when the registration is made. It is, in short, a registration of *things*, and, what is wanted, is a registration of *persons* in possession. Again, it will be said that this Bill will increase litigation and promote collusion between one Zemindar and a Ryot to the prejudice of another Zemindar under whom the Ryot holds: but I maintain that, so far from secretly tripping up the Zemindar, it will afford him additional security; transfers of tenures, whether transferable or not by the common law of the country, are of daily occurrence, and this enactment will have the effect of giving notice to the Zemindar's local agents; will excite their vigilance, and place them on their guard. In fact, there will really be less chance of collusion with this law than without it. Again, I have been told that this law will be a dead letter, but, considering how little we really know of the tendency of natives or Europeans to avail themselves of any such facilities, I do not see how we can pronounce on the failure of an experiment until the experiment has been tried and failed.

I have also been told, as the Council will see in the papers which I shall append to this Bill, that the present law is amply sufficient; but I maintain that the experience of the past year has fully proved that it is not sufficient at all; and in a case like this, one series of facts, one solid obstruction, one good, honest, stubborn difficulty is worth all the theories and speculative arguments in the world.

Other persons, besides the Planters may find this enactment advantageous and it may be resorted to by native Zemindars and by Europeans for the cultivation of Cotton.

Lastly, Sir, I may be reminded that I am legislating for a class; but I would observe that one-half our legislation, and some of the best laws in our statute books, have sprung from hardships inflicted on, and difficulties experienced by, particular classes in society or even individuals. I need only instance the enactment of the law embracing *putnee* tenures, or Regulation VIII of 1819, which is due to the late Mr. Butterworth Bayley, and that Act which is now of general adaptation throughout a large part of lower Bengal, may be said to have originated, at the commencement of this century, by the act of a single individual, the Maharajah of Burdwan. When then serious difficulties have been experienced during the past season, when hardships have been found to be beyond the pale of the existing laws, when there is a state of things which tends to increase disputes, to perpetuate excitement, and to entail pecuniary loss on an important section of the community, I think that it is the duty of the Government and the Legislature to interpose and to endeavor to remedy such a state of things by enactments which, like the present, purpose to provide a cheap, practical, and easy remedy for a want that is admitted, for a difficulty that has been felt, and which no one can contend is really inconsistent with either sound policy or good faith.

The Bill was read a first time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The consideration of Section 337, and the following Sections of Chapter XXV relating to appeals, was post-

poned (on the Motion of Mr. Seton-Karr) till after the consideration of the new miscellaneous Chapters proposed by Mr. Harington.

MR. HARINGTON said that on Saturday last he had undertaken to revise the Chapter relating to local nuisances, which he had done, and he trusted that the Sections which he was now about to propose for adoption in lieu of the Chapter, as it was first framed, would be found to be in accordance with the views of the Committee. The Chapter was as follows:—

"CHAPTER XIX*a*.

Of Local Nuisances.

1. Whenever the Magistrate of a District or of a division of a District may consider that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place, or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place, or that the construction of any building or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented, or that any building is in such a state of weakness that it is likely to fall and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public, he may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of or having control over such building, substance, tank, or well as aforesaid, calling on such person within a time to be fixed in the order to remove such obstruction or nuisance, or to suppress or remove such trade or occupation, or to stop the construction of, or to remove such building, or to alter the disposal of such substance, or to fence such tank or well, (as the case may be), or to appear before such Magistrate within the time mentioned in the order, and show cause why such order should not be enforced.

2. Such order shall, if practicable, be served personally on the person to whom it is issued; but if personal service is found to be not practicable, the order shall be notified by proclamation, and a written notice thereof shall be set up at such place or places as may be best adapted for conveying the information to such person.

3. The person to whom such order is issued, shall be bound within the time specified in the order to obey the same, or to appear before the Magistrate, to show cause as aforesaid, or he may apply to the Magistrate by Petition for an order for a Jury to be appointed to try whether the order is reasonable and proper. On receiving such Petition, the Magistrate shall forthwith appoint a Jury, which shall consist of not less than five persons, whereof the President and one-half of the Members shall be nominated by such Magistrate, and the remaining Members by the party petitioning. The Magistrate shall suspend the execution of the order pending such enquiry, and be guided by the decision of the Jury, which shall be according to the opinion of the majority. If the Petitioner shall by neglect or in any other way prevent the appointment of a Jury, or, if from any cause, the Jury so appointed shall not decide and report within a reasonable time to be fixed in the order for their appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate, and if from any of the above causes no decision be made by the Jury, the order of the Magistrate shall be carried into effect as hereinafter provided.

4. If the person to whom the order mentioned in Section 1 is issued shall not obey such order, or show cause against the same as hereininafter provided, or petition for a Jury within the time specified in such order, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code, and the Magistrate who issued such order may proceed to carry such order into execution at the expense of such person, and may realize such expenses either by the sale of any building, goods, or other property removed by his order or by the distress and sale of the personal property of the person aforesaid, and no suit or action shall be entertained in any Court in respect of any thing necessarily or reasonably done to give effect to such order.

5. If, in a case referred to a Jury, the Jury shall find that the order of the Magistrate is reasonable and proper, the Magistrate shall give notice thereof to the person to whom the order was issued, and shall add to such notice an order to obey the order first mentioned within a time to be fixed therein under the penalty provided by the Indian Penal Code as aforesaid. If such latter order shall not be obeyed, the Magistrate may proceed as in the last preceding Section.

6. If the person to whom the order of the Magistrate is issued shall appear and show cause against the same, and shall satisfy the Magistrate that the order is not reasonable and proper, no further proceedings shall be taken in the case.

7. If, pending the enquiry by a Jury, the Magistrate shall consider that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, it shall be lawful for such Magistrate to issue such an injunction and order to the person mentioned in that behalf in Section 1 as shall be required to obviate or prevent such danger or injury, and in default of such person forthwith taking all necessary measures ordered to be taken by such injunction or order, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger or to prevent such injury, and no suit or action shall be entertained in respect of any thing necessarily or reasonably done for that purpose.

8. Nothing in this Chapter shall interfere with the provision of Section XXXIV of Act V of 1861 (for the regulation of Police.)"

The Chapter was passed after the insertion of the following words before the words "Section XXXIV" in Section 8, on the Motion of Mr. Forbes :—

"Section XLVIII of Act XXIV of 1859 (for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George) or of"

MR. HARINGTON said that, in moving the introduction of the following as a separate Chapter after the Chapter relating to Local Nuisances which had just been adopted, he deemed it sufficient to remark that the Chapter would merely extend to the Mofussil what was already the law in the Presidency Towns under the Act passed last year :—

"CHAPTER XIX*b*.

Of the maintenance of Wives and Children.

1. If any person, having sufficient means neglects or refuses to maintain his wife or any legitimate or illegitimate child unable to maintain himself, it shall be lawful for the Magistrate of the District or other Officer exercising the powers of a Magistrate, upon due proof thereof, to order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate, not exceeding fifty Rupees in the whole, as to the Magistrate or other Officer as aforesaid shall seem reasonable; and if such person shall wilfully neglect to comply with the order, the Magistrate or other Officer as aforesaid may, by warrant, direct the amount due to be levied in the manner provided for levying fines; or may order such person to be imprisoned, with or without hard labor, for any term not exceeding one month. Provided that if such person offer to maintain his wife on condition of her living with him, and his wife shall refuse to live with him, it shall be lawful for the Magistrate or other Officer as aforesaid to consider any grounds of refusal stated by such wife; and he may make the order allowed by this Section notwithstanding such offer, if he shall be satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty. No wife shall be entitled to receive an allowance from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband.

2. Any person ordered to pay a monthly allowance for the maintenance of his wife or child, or both, under the provisions of the last preceding Section, may apply to the Magistrate, from time to time, for the reduction of such allowance on proof of an alteration in the circumstances of himself, his wife, or child justifying such reduction."

The Chapter was passed after the insertion of the words "for every breach of the order" after the words "the Magistrate or other Officer as aforesaid may" and before the words "by warrant" in Section 1, on the Motion of Sir Charles Jackson.

MR. HARINGTON moved that the following be added to the Bill as a new Chapter, to follow the two Chapters which had just been ordered to be inserted :—

"CHAPTER XIX*c*.

Of Disputes relating to the possession of land, or the right of use of any land or water.

1. Whenever the Magistrate of the District or other Officer exercising the powers of a Magistrate shall be satisfied that a dispute, likely to induce a breach of the peace, exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court in person, or by agent, within a time to be fixed by the Magistrate or other Officer as aforesaid, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute. The Magistrate or other Officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire which party is in possession of the subject of dispute, and after satisfying himself upon that point, shall record a proceeding, declaring the party whom he may decide to be in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time.

2. If the Magistrate or other Officer as aforesaid shall decide that neither of the parties is in possession, or shall be unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach the subject of dispute until a competent Civil Court shall have determined the rights of the parties, or who ought to be in possession.

3. If a dispute arise concerning the right of use of any land or water, the Magistrate or other Officer as aforesaid within whose jurisdiction the subject of dispute lies, may enquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the Magistrate or other Officer may

order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent Civil Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the enquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

He said he had some hesitation in moving these Sections, because he contemplated the omission of an important Section of the law from which the Sections were taken. That law was Act IV of 1840, and his difficulties had been greatly increased by the praise which had been bestowed on the Section proposed to be omitted, by the Honorable Member for Bengal in the speech with which he had prefaced his motion for the first reading of a Bill introduced by the Honorable Member that day. Notwithstanding what had fallen from the Honorable Member for Bengal, he (Mr. Harington) still thought that Section IV Act IV of 1840 gave a jurisdiction to the Criminal Courts which more properly belonged to the Civil Courts, and that the Criminal Courts should no longer be allowed to possess that jurisdiction. In Madras and Bombay the Magistrates had no such power as was given by the Section in question to the Bengal Magistrates, and he had no reason to believe that the want of such a power was felt by the Magistrates in the other two Presidencies. He thought that in this respect the Bombay Regulations proceeded on the correct principle, namely, that the interference of the Magistrates in respect to disputes relating to land should be restricted to the maintenance of the public peace, which was the duty of every Magistrate. The Bombay law said—

"When a breach of the peace is anticipated in any act calculated to lead thereto, such as the forcible possession of disputed property, the Magistrate may take recognizances or security if necessary."

But the law went on to say—

"The interference of the Magistrate in such cases shall, by no means, affect or confer any proprietary title or ulterior right, it being intended, when such may be disputed, only to preserve the peace until decision and enforcement by the Civil Court."

This was quite proper, and the jurisdiction given was strictly within the province of the Magistrate. He might further observe that whatever reason had existed up to the present time for retaining Section IV Act IV of 1840 as a part of the Criminal Regulations of Bengal, had been removed by the enactment of Section XV Act XIV of 1859, which would come into operation at the same time as the present Bill. That Section said—

"If any person shall, without his consent, have been dispossessed of any immoveable property otherwise than by due course of law, such person or any person claiming through him shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossession."

In moving the introduction of this Section in Act XIV of 1859, the Honorable and learned Vice-President observed that the Section would transfer to the Civil Court cases of the description which, under Act IV of 1840, were now heard by the Magistrate. They could not require both laws, and the proper course seemed to be to take away the jurisdiction in such cases from the Criminal Courts and to confine it to the Civil Courts, which was what he proposed to do. The remaining Sections of the proposed new Chapter had been taken almost word for word from the existing law, and they did not appear to call for any particular remark from him.

Section I being proposed by the Chairman—

MR. SETON-KARR said that he should not have objected to the introduction of this amendment had it embodied the whole of Act IV of 1840.

Nor would he have objected had the Honorable Member entirely left out that law. But he objected to the introduction of the Act of 1840 in this mutilated fashion. An important Section (No IV) of the old law had been omitted entirely. That Section allowed any party to complain to a Magistrate, that he had been forcibly dispossessed of any land, premises, water, fisheries, crops, or produce, &c., such party being a proprietor, dependant talookdar, farmer, under-farmer, ryot, or other. The complaint was to be laid within one month. This Section was as valuable as any other part of the excellent law of 1840, and ought not to be omitted, especially in the present circumstances of the country. A great deal of praise and a great deal of abuse, he would observe, had been lavished on this useful enactment, but, he believed that one-half of the mistakes which had been committed in cases adjudicated under it, had been committed, not from ignorance of the language, nor from inexperience in revenue law, or in land tenures, but from young and inexperienced officers shifting the burden of proof to the wrong party. This same mistake as to the proper party to prove any fact was the cause of nine-tenths of the blunders that were made in Mofussil Courts, and no law could be framed which would not perhaps give occasion to them. However, he was of opinion, that if the law of 1840 were repealed, it should be repealed after inquiry from the local Governments, who might call on the Executive Officers for opinions, or it should be repealed under any regular proposal for that end, which might now be under the consideration of the Council. It should not be partly repealed at the close of such a Bill as that of the Criminal Procedure which the Council were considering. He was aware that it had been said that Act IV of 1840 was rendered superfluous, if not actually repealed by Act XIV of 1859, the Act for the Limitation of Suits. But on looking to that Act, he found that the existence of Act IV of 1840 was distinctly recognized by Clause 7 of Section 3 of the Act of 1859, and was not yet repealed. With these views he should deprecate any encroachment on Act IV of 1840. It had been successively worked by a large number of officers. It would occupy a long time to enumerate the disputes it had terminated, and the broken heads it had saved. It was familiar as a household word to hundreds of ryots. It was of great simplicity and strength; of admirable versatility; and of peculiar adaptation to the diversified claims which were likely to be preferred to landed interests and rights in this country, which claims it was necessary that those who were responsible for the peace and security of the country, should have the means promptly and efficiently to decide.

MR. HARINGTON said, the Honorable Member for Bengal considered it scarcely fair that he (Mr. Harington) should have proposed at this late period a motion for the first time to repeal a most important law. But he (Mr. Harington) did not think his motion was open to any charge of unfairness. That motion did not propose to repeal a single Act or Regulation. No doubt, it was intended, as soon as this Bill passed into law, to follow it up with a repealing Bill, and in that Bill he should certainly propose to include the whole of Act IV of 1840. But the Bill would be published for the usual time, and the local Governments and the officers subordinate to them would have ample opportunity of stating to the Council any objections that they might have to any part of the Bill, or to the inclusion therein of any laws with a view to their repeal, which it might be considered desirable to retain. He must also remind the Committee that legislation in respect to Act IV of 1840 was not now proposed for the first time. A Bill for the repeal and amendment of that Act had actually been before the Bill almost from the time the Council was first constituted, and was still pending. The Honorable Member for Bengal having only lately joined the Council, was probably not aware of this fact. Amongst the annexures of the Bill was a report from the Commis-

sioner of the Benares Division, who declared that Act IV of 1840 caused more litigation and reversal of orders than any other law. He went on to say,—

"this class of cases was transferred to the Magistrates on account of the delay in the Civil Courts. Now that civil suits are decided almost as fast as Act IV of 1840 cases, there seems no reason for burdening the Magistrates any longer with any of these cases, except those involving actual violence and breach of the peace punishable as assault."

He (Mr. Harington) entirely concurred in these remarks. He had had a very long and large experience of the working of Act IV of 1840, and he must say he knew no law which had been more perverted from its proper purpose, or in the administration of which the intention of the Legislature had been more grossly departed from. Instead of being restricted in its application, as the law intended, cases without number had been instituted under it, in which the Magistrate had no jurisdiction, and which should have gone to the Civil Courts. He could mention numerous instances. He recollected one case in which a party went round to the ryots of an estate, and warned them, with certain threats as to the consequences if they neglected the warning, against paying their rents any longer to a particular person to whom they had been in the habit of paying them. This was declared to be a forcible dispossession within the meaning of Act IV of 1840, and on complaint lodged, the Magistrate entered into a long investigation. The Magistrates often became in such cases Civil Courts of first instance, quite contrary to the intentions of the law, and much injustice was done in consequence. He had little doubt that if the cases referred to by the Honorable Member for Bengal, as having been decided under Section IV Act IV of 1840, were examined, it would be found that very many of them did not properly fall under that Section, and that they ought to have gone either to the Collector or to the Civil Court. With Section XV Act XIV of 1859 before them, he could see no sufficient reason for their retaining Section IV Act IV of 1840 any longer, and he thought it was rightly omitted from the Chapter now proposed for their adoption.

THE CHAIRMAN said, Act IV of 1840 extended to two subjects, namely, first, retaining a man in possession and preventing a breach of the peace; and, secondly, under Section IV, putting again in possession a man who had been turned out of possession. He thought that the duty of the Magistrate was to prevent a breach of the peace; and if the Magistrate apprehended that a breach of the peace was likely to ensue, he might, in order to prevent such breach, declare who was in actual possession, and, having done so, retain that party in possession until a competent Court decided on the question of the right to possession. That, he (the Chairman) thought, was all that a Magistrate ought to do. If a person should be wrongfully turned out of possession by another party, then, under Section XV of Act XIV of 1859, he might go immediately to a Civil Court, and the Civil Court, without trying the question of right, would restore him to possession until the other party chose to assert his right by instituting a suit to establish his title to the property in dispute and to recover possession thereof.

SIR BARTLE FRERE asked how the Section ran?

THE CHAIRMAN read the Section (already quoted in full in Mr. Harington's speech). You did not want two different proceedings. If the case was to go to a Court of law, you did not want the Magistrate to put the ousted party into possession. The Bombay law was somewhat similar to the Section of Act XIV of 1859 to which he had referred; the only difference being that, instead of going to the Civil Court, the ousted party was required to go to the Collector. The Bombay law was contained in Clause 2 Section 1 of Act XVI of 1838 which enacted as follows:—

"Provided, nevertheless, that it shall be lawful for the Revenue Courts to give immediate

possession of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed of the same, or of the profits thereof, provided application be made to them by such party within six months from the date of such dispossession. And, in order to the due execution of such power, it shall be lawful for the Revenue Courts to determine the facts of such possession and dispossession, and the party to whom the Revenue Courts shall so give immediate possession, shall continue in possession, until ejected by a decree of a Court of Adawlut."

It was not now proposed to repeal Section IV of Act IV of 1840, or Clause 2 Section I of Act XVI of 1838. Before either of those provisions was repealed, it would be necessary to prepare a Bill for the repeal of all the laws which might have become unnecessary by the passing of the Penal Code and of the Code of Criminal Procedure. It had been proposed to prepare a repealing Bill after the passing of the Penal Code. But it was found that many laws related both to the substantive penal law and to Procedure, so that it would be very difficult to separate them. It was therefore arranged, when the Code of Criminal Procedure was passed, to bring in a Bill for the repeal of the several laws which might have been superseded by the Penal Code and the Code of Criminal Procedure, and which were now scattered all over the Statute Books. It was not proposed now by the Clause before the Committee to give the Magistrate any greater powers than he now possessed, or to take away from him any powers now vested in him. This Clause only proposed to give the Magistrate a portion of the powers conferred by Act IV of 1840; and when that Act might be repealed, provision could be made in the repealing Bill, expressly keeping alive Section IV of the said Act if it should be found necessary to do so.

After some conversation, the Section was put, and the Council divided as follows :—

Ayes 6.	*Noes* 2.
Mr. Seton-Karr.	Sir Robert Napier.
Sir Charles Jackson.	Sir Bartle Frere.
Mr. Erskine.	
Mr. Forbes.	
Mr. Harington.	
The Chairman.	

So Section 1 was carried.

Sections 2 and 3 were passed as they stood.

MR. SETON-KARR said that there should be a limitation as to appeal in cases of disputed possession. As it had been decided that the question of possession should be determined by the Civil Courts, if suits for the purpose were brought within six months from the time of dispossession, he should be glad to see taken away the power of appeal from the decisions of those Courts; otherwise, if a man were allowed to appeal in such cases from the decisions of the Civil Courts, and also from orders passed in regular suits for the decision of the right or title, he would be entitled to institute six suits instead of one.

MR. HARINGTON said that he had no objection to the proposition not to allow an appeal from orders passed under the Chapter they were now considering. But the question, as to whether an appeal should be allowed in possessory suits falling under Section XV Act XIV of 1859, was one which could not properly be considered in connection with the Code of Criminal Procedure. That question belonged to the Civil Code.

THE CHAIRMAN said that, as regarded this Code, he proposed to move the addition of the following Clause to the Chapter just adopted :—

"Any order made by the Magistrate or other Officer as aforesaid under this Chapter shall be final."

As regarded appeals from decisions or orders regarding possession, however, he was quite willing to propose a finality Clause in the Bill which he intended to introduce next Saturday to amend the law of limitation; or if the Honorable Member for the North-Western Provinces had no objection, such a Clause might be inserted in the Bill brought in by that Honorable Member to amend the Code of Civil Procedure.

MR. HARINGTON said, he would undertake to introduce a Clause to the proposed effect into the Bill to amend the Code of Civil Procedure.

THE CHAIRMAN'S Section was then put and carried.

MR. FORBES proposed to move the addition of the following Section to the same Chapter :—

"Nothing in the foregoing Sections of this Chapter shall affect the provisions of Regulation V. 1822 of the Madras Code."

He said that he did not want to shut out Madras from the benefit of this Chapter. But, owing to the ryotwarry system prevailing in Madras, whereby the revenue was collected direct by the Collector from the ryots, it was necessary to introduce a Clause to the effect proposed by him. The subject of dispute might be an irrigating channel watering 10,000 acres of land, and would be satisfactorily settled by the Collector or other Revenue Officer ; whereas, if the channel were to be attached until the right of the parties were determined by a competent Court as provided for in the second of the Sections now under discussion, the whole land might be thrown out of cultivation pending the decision, and the revenue of the State would materially suffer.

MR. ERSKINE said, that the only doubt he entertained with regard to the proposed Section was, that if one law were expressly kept alive, the natural inference would be that the others which were not so kept alive had been repealed.

The Section was ultimately passed as follows :—

"Nothing in this Chapter shall affect the powers of a Collector, or of a person exercising the powers of a Collector, or of a Revenue Court."

The consideration of the Chapter relating to appeals was then resumed.

Section 337 provided as follows :—

"Unless otherwise provided by any law for the time being in force, *an appeal shall lie from any order in a judicial proceeding other than a criminal trial.* If the order was passed by an Officer not vested with the powers of a Magistrate, the appeal shall lie to the Magistrate of the District or other Officer exercising the powers of a Magistrate, and empowered by the Government to hear such appeals. If the order was passed by the Magistrate of the District or other Officer, exercising the powers of a Magistrate, the appeal shall lie to the Court of Session. An appeal on any point of law shall also lie in any such case to the Sudder Court from any order made in appeal by any Court subordinate to such Sudder Court.

MR. SETON-KARR moved the omission of the words in italics, and the substitution of the following :—

"one appeal and no more shall lie from every order in a judicial proceeding other than a criminal trial, or from every order requiring the personal attendance of parties accused of offences before any Court."

In moving this amendment, he said, he was anxious to set a limit to appeals in miscellaneous cases other than criminal trials, but the main object of the Section was to set at rest a question which had always excited considerable discussion and excitement in the Mofussil Courts. As a general rule, every man was bound to show obedience to the established tribunals ; and to assist in the administration of justice was derogatory to no one. Every man was consequently bound to appear to answer to a charge. But there were often cases instituted from a spirit of vindictiveness and apparently of great enormity which, on examination, sunk into nothing. Such cases were merely intended to bring rich and influential men bodily into Court, and when they had so appeared in person, malice was satisfied. On the other hand, rich and powerful Zemindars were often, and not unjustly, accused of offences very distinct from robbery or felony, of offences which conveyed no social degradation whatever, and which, on examination, proved to be well founded. Such were the offences of kidnapping and illegally confining innocent persons. In such cases it was most essential that a man should appear in person : yet the practice had been for an appeal to be allowed from the Magistrate to the Sessions Court, and if the Sessions Court confirmed the order of the Magistrate, then an appeal had often been preferred to the Sudder Court, and cases had come to his knowledge in which a full bench had

sat in order to determine whether a Zemindar, whom the local authorities had called on to appear in person, should or should not appear vicariously by his agent. One case in particular had lasted for three years, because, what he must term an injudicious interference had been exercised with the acts of the lowest authorities, and the recurrence of these proceedings weakened the hands of the executive and did not promote the administration of justice. Thus, on the one hand, against the exercise of this power was set up the haste and inexperience of the Magistrates and the necessity for some speedy redress; while on the other, it was expedient to strengthen or not to weaken the legitimate power of the Magistrate. He proposed to steer a middle course, and to allow one appeal and no more from all orders requiring personal attendance, and that to the Sessions Court. When the subject was last before the Council, the Honorable Member for Bombay suggested that the appeal should lie to the Commissioner, but he (Mr. Seton-Karr) thought that the Judge over one or two Districts was the person to whom the appeal should be preferred, rather than the Commissioner who had four or five Districts to look after, and who, like the Magistrate, might be prejudiced against powerful natives. The Judge would be able to inform himself of the circumstances in each case without bias or prejudice, and to him the appeal should lie.

MR. HARINGTON said, he thought there was much force in the arguments which had been made use of by the Honorable Member for Bengal to show that when an order was passed by a Magistrate refusing to permit a person, for whose attendance a summons had issued on complaint, to appear and answer by agent, some appeal should be allowed from the order; but if they were to take the case which had been cited by the Honorable Member for Bengal in support of his Motion, and base their legislation upon it, he very much doubted whether a single appeal, which was all that was proposed by the Honorable Member, would be found sufficient to secure the object aimed at. If they were to attempt to do justice in such cases by means of an appeal, he feared they must go farther than was contemplated in the motion of the Honorable Member, and continue the present practice, which allowed cases of this nature to be carried up to the Sudder Court by a second or special appeal. He understood the Honorable Member to say that the order of the Magistrate in the case mentioned by him was confirmed by the Sessions Judge, but that both the order of the Magistrate and the order of the Session Judge were reversed in appeal by the Sudder Court. The result therefore seemed to show that the Session Judge was as much in fault as the Magistrate. It appeared, however, to him that all that was necessary to be done in the way of precaution might be accomplished without giving an appeal as of right from the order of the Magistrate. What he would propose was that in cases in which a summons should ordinarily issue in the first instance, the summons should give the party named therein, the option of appearing either in person or by agent. Appearance by agent in such cases would thus be made the rule, though, of course, it would be right that the Magistrate should retain the power which he possessed under the Code, as it now stood, of substituting a warrant of arrest for a summons whenever he had reasonable ground to suspect that the party complained against intended to abscond. He would also make a slight addition to Section 353, and insert after the word "bail," in the third line, these words, namely, "or to appear by agent." If these alterations were made, he thought they would have done all that was required to prevent parties from being improperly made to appear in person in the Magistrate's Court instead of by agent, and that they might then safely dispense with an appeal as of right in cases such as those to which the amendment of the Honorable Member for Bengal was intended to apply.

MR. ERSKINE said, he was doubtful as to the very matter on which the

Honorable Member for Bengal seemed to lay the greatest stress ; namely, the recognition of a right of appeal to the Sessions Judge from orders by the Magistrate requiring the personal attendance, in his Court, of persons accused of criminal offences. The Magistrate might, at his discretion, exempt an accused person from personal attendance under Sections 149 and 223 ; but if in any case a Magistrate felt that he could not rightly exercise the power of exemption which he thus possessed, he (Mr. Erskine) was not prepared to say that it would be either expedient or fair to the Magistrate that the Sessions Judge should be allowed to interpose authoritatively between that Officer and a criminal, by ordering the Magistrate not to require his attendance. Such a course seemed especially open to objection, since they had provided that an accused person might be questioned by the Magistrate, and that the record of his answer should be evidence. No authority should be enabled to prevent a Magistrate from getting at evidence connected with a criminal charge. He (Mr. Erskine) would therefore leave the entire discretion and throw the entire responsibility in these cases on the Magistrate personally, leaving it to his superiors to notice any gross indiscretions which he might commit.

THE CHAIRMAN said, there was another objection to the proposed amendment. Was it intended to allow an appeal from an order requiring the personal attendance of the accused in a non-bailable offence, a case of murder for instance? He did not think that an appeal should be allowed in such a case.

After some conversation, the following new Section was substituted, on the Motion of Mr. Harington, for Section 337, Mr. Harington at the same time undertaking to prepare before Saturday next, in communication with the Honorable Members for Madras, Bombay, and Bengal, a Section showing the cases in which an appeal should be allowed, but in which no provision for an appeal had as yet been made:—

"Unless otherwise provided by this Code, or by any law for the time being in force, no appeal shall lie from any order or sentence of a Criminal Court."

Section 338 was passed after a verbal amendment, (on the Motion of Mr. Erskine), and after the substitution of *sixty* for *ninety* days as the period within which Petitions of appeal to the Sudder Court must be presented (on the Motion of Sir Charles Jackson).

Section 339 was passed as it stood, after the addition of the following words to Section 357 :—

"or unless the Court shall for any special reason see fit to grant such copy free of expense."

Section 340 provided as follows :—

"It shall be competent to the Appellate Court to reject the appeal if, on a perusal of the petition of appeal and the copy of the sentence or order appealed against, there appears no sufficient ground for questioning the correctness of the decision, or for interfering with the sentence or order appealed against."

SIR CHARLES JACKSON moved the omission of the words "there appears," and the substitution of the words "and after hearing the appellant or his Counsel or Agent, if they appear, the Court shall consider that there is."

Agreed to.

THE CHAIRMAN moved the addition of the following words :—

"Before rejecting the appeal, the Court may call for and peruse any part of the proceedings of the Lower Court, but shall not be bound so to do."

The Motion was carried, and the Section as amended then passed.

Section 341 was passed as it stood.

Section 342 provided as follows :—

"The Appellate Court may call for the proceedings of the Lower Court, and may confirm, alter, or reverse the finding and sentence or order of such Court, but not so as to enhance any punishment that shall have been awarded."

The Section was amended as follows :—

"The Appellate Court, after perusing the proceedings of the Lower Court, and after hearing the appellant or his Counsel or Agent if they appear, may alter or reverse the finding," &c.

Section 343 was passed as it stood.

Section 344 was passed after a verbal amendment.

Section 345 was passed as it stood.

Section 346 was passed after the omission of the reference to Section 337, a blank being kept to be filled up afterwards.

Section 353 provided as follows:—

"The Court of Session may direct that any accused person shall be admitted to bail before a Magistrate, or that the bail required by a Magistrate be reduced ; and may also direct that a party not in custody be admitted to bail on his surrendering to a warrant."

MR. HARINGTON, with reference to what took place on the amendment proposed by the Honorable Member for Bengal in Section 337, asked leave to go back to Section 353, for the purpose of moving the omission of the words "accused person shall be admitted to bail" and the substitution of the words "person accused of a bailable offence shall be admitted to bail or permitted to appear by Agent." In doing so he said, he would content himself with remarking that although he was not anxious that an appeal should be given as of right from an order of a Magistrate refusing to allow a party, against whom a summons had issued on complaint, to appear by Agent instead of in person, he still thought it right, after what had been stated to-day by the Honorable Member for Bengal on an earlier Section, that a power of interference with the Magistrate's order to prevent it from being final in all cases, should rest somewhere. It appeared to him that this power might be unobjectionably exercised in the manner which he had suggested, and that the power proposed to be given to the Court of Session would not, if judiciously exercised, improperly interfere with the discretion vested by the Code in the Magistrates in regard to allowing or not allowing persons accused of criminal offences to appear and defend themselves by Agent. He was quite willing that the application of the words, which he wished to see inserted, should be restricted to cases in which persons were accused of bailable offences.

THE CHAIRMAN said, he was not sure if the Section should apply to bailable cases only, as would be the effect of the proposed amendment. He thought that there might be cases of homicide or manslaughter in which the Sessions Court ought to have the power of admitting the accused to bail. For instance, there was the case of a man who lately killed another by running over him with his buggy, in which the Supreme Court admitted the accused to bail, although the Coroner could not do so. Then there might be cases of theft, like that of the lady who was lately tried for stealing bank notes at the house of a lady friend in the course of a visit, and who was acquitted. Was it intended not to admit to bail in such a case?

After some conversation, Mr. Harington's amendment was, by leave, withdrawn.

THE CHAIRMAN moved the omission of the words "before a Magistrate," as being an unnecessary restriction on the power of a Court of Session.

Agreed to.

THE CHAIRMAN also moved the omission of the words "and may also direct that a party not in custody be admitted to bail on his surrendering to a warrant" at the end of the Section, as encouraging compromises with offenders, which he considered very objectionable.

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved that the following new Section be introduced after Section 353 :—

"The Court of Session may also direct that the person accused of an offence for which a

Summons may be issued under Chapter XV, may appear before a Magistrate by Agent."

MR. SETON-KARR said, that he feared very much that the want of some check like that contained in the proposed Section, would give rise to great injustice being done, and be a source of dissatisfaction to a large number of our native subjects. He was glad that he had in this matter the support of the Honorable Member for the North-Western Provinces, whose judicial experience was ten-fold that to which he (Mr. Seton-Karr) could lay claim. He once more implored the Council to pause before they took away all check and all power of speedy redress, in a matter in which a large number of Magistrates, scattered over the country, might do grievous wrong from haste, inexperience, or prejudice.

MR. ERSKINE said that the amendment of the Honorable Member for the North-Western Provinces would, he believed, introduce an innovation into the practice of the Bombay Presidency ; and, with due deference to the opinion of that Honorable Member and of the Honorable Member for Bengal, he must support the Bill as it stood.

SIR BARTLE FRERE said, it appeared to him that the correct principle was that, unless some very good cause were shown, every man ought to appear in person and answer for a crime of which he was accused. It was only when any substantial ground of exception could be made, that an agent should be allowed to appear for the accused person. As to the possibility of some Magistrates abusing the power unless an appeal were allowed to lie from them to the Sessions Court, he thought that our object ought not to be to lower our law to the standard of incompetent Magistrates, but to raise the Magistrates to our standard of legislation.

SIR CHARLES JACKSON said, he thought that the Honorable Members for Bengal and the North-Western Provinces had misunderstood the question at issue. One would have thought, from what had fallen from those Honorable Members, that this Section compelled the parties to appear in person under all circumstances ; whereas the question really was, whether the Magistrate was a competent person to decide as to the matter of personal attendance in Court, or whether the Sessions Judge should be allowed to interfere with the decision of the Magistrate. He (Sir Charles Jackson) thought that the Magistrate, by reason of his being on the spot and his knowledge of the parties concerned, was a much more competent person to deal with such a matter than the Sessions Judge.

THE CHAIRMAN said, he observed that, under the Code of Civil Procedure, the Judge might at any time summon any party to attend as a witness ; or might, on the application of the plaintiff, summon the defendant to appear in person and produce his witnesses, it being left to the discretion of the Court to determine whether any case had been made out by the plaintiff for summoning the defendant and his witnesses. If that discretion was left to the lowest Court of Civil Judicature, he (the Chairman) thought that in criminal cases the Sudder Court ought to have the same power. The Sudder Court might want a party as a witness.

MR. HARINGTON said, he wished to be allowed to make one observation on the remarks which had been based by the Honorable and learned Vice-President on the Code of Civil Procedure. No doubt, under that Code, any plaintiff or defendant might be summoned to appear in Court in person to give evidence in the case in which he was concerned. This was the rule ; but it had been considered necessary to introduce a Section into the Code which gave the local Governments power to exempt, at their discretion, persons of rank and position from personal appearance in Court, and he thought it would be generally admitted that in some of the cases which came before the Criminal Courts a similar indulgence should be granted to persons of the classes referred to in the Civil Code. The

words proposed by him to be inserted in the Section before the Committee simply aimed at securing to such persons, under proper rules, the indulgence in question. In theory it might be wrong to recognise any such distinctions in criminal legislation, but in practice it was often found necessary to put theory aside and to provide for exceptional cases as had been done in the Section of the Civil Procedure Code to which he had referred. They could not altogether disregard the peculiar habits, ideas, and feelings of the people of this country. Some concession to these habits and feelings, such as that contained in the Civil Procedure Code, was not only proper but necessary. Originally it had appeared to him that in respect of the matter under consideration, they should trust the Magistrates entirely and allow no interference with their orders, the Magistrates being, of course, responsible to the Government for the proper exercise of the discretionary power vested in them; and if he recollected rightly, he had on a former occasion expressed himself to that effect. But he had consulted some old and experienced Judges as to whether this absolute power could properly be given to the Magistrates. He found that their views were in accordance with what had been stated to-day by the Honorable Member for Bengal, and he had been led in consequence to recommend a slight modification of his original proposition.

THE CHAIRMAN said, he should vote against the proposed amendment. He thought that the power of excusing the personal attendance of an accused person before the Magistrate might be safely left to the discretion of the Magistrate.

The question was then put, and the Council divided as follows :—

Ayes 2.	*Noes* 6.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Harington.	Mr. Erskine.
	Mr. Forbes.
	Sir Robert Napier.
	Sir Bartle Frere.
	The Chairman.

So the proposed Section was negatived.

The following Section was introduced after Section 350, on the Motion of Mr. Erskine :—

"When any person under the age of 16 years, shall be sentenced by any Magistrate or Sessions Judge to imprisonment for any offence, it shall be lawful for such Magistrate or Judge to direct that such offender, instead of being imprisoned in the Criminal Jail, shall be confined in any reformatory which may be recognised by the local Government as a fit place for confinement, in which there may be means of suitable discipline and of training in some branch of useful industry, and which shall be kept by a person willing to obey such rules as the Government may direct with regard to the discipline and training of persons confined therein. All persons confined under this Section shall be subject to the rules so laid down by Government."

MR. HARINGTON moved that Section 302 be omitted with a view to the following Section being substituted for it :—

"The provisions of Sections 162, 162*a*, 162*b*, 162*c*, 162*d*, and 162*e*, relating to the examination of parties and witnesses, the mode of recording evidence, and the correction, attestation, and interpretation thereof in trials before the Magistrate, shall be applicable to trials before the Court of Session under this Chapter."

He originally proposed to render it obligatory upon the Judges of the Courts of Session to take down the evidence given on trials before them with their own hands and in their own vernacular; but it having been suggested by some Honorable Members that the rule might in practice operate occasionally very inconveniently, he had modified his amendment, and all that he now proposed was to extend to the Courts of Session the rules regarding the recording of evidence which the Committee had already adopted as respected the Courts of the Magistrates. To the amendment, so framed, he thought no reasonable objection could be taken.

MR. ERSKINE said, he had so often troubled the Council with his opinion as to the danger of dispensing with a complete vernacular record in criminal trials in the Mofussil, that he

did not wish to inflict upon them a repetition of all that he had already repeatedly urged on that subject. He must beg them to observe, however, that the amendment now before the Council was the climax of the changes proposed to be effected in this direction by the Honorable Member for the North-Western Provinces. At first, the disuse of a vernacular record had been suggested only in connection with minor cases, which would generally be finally decided by the officer who first enquired into them. Then the grant of a discretional power to substitute an English record was proposed in connection with all cases tried by any Magistrate, and now the proposal was to empower any local Government to dispense entirely with the vernacular record even in Courts of Session. As he (Mr. Erskine) had observed when this question last came before the Council, there would apparently be nothing—if such a discretion were allowed—to prevent the local authorities in any Province from ruling that all pleadings in any criminal trial might be in English, and that all the proceedings might be conducted through the medium of an English interpreter. Whether, therefore, the provision now proposed were right or wrong, he (Mr. Erskine) trusted at least that the Council would fully consider the importance of the change which it was calculated to effect in the system of Criminal Procedure throughout the country. He did not know whether the Honorable Member for the North-Western Provinces contemplated the possibility of any local Government, if these Sections were passed, being able to direct—without any infringement of the law—that all pleadings in criminal cases should thenceforth be in English, and that all their proceedings might be conducted through interpreters.

MR. HARINGTON said, he had on a former occasion pointed out that the amendments proposed by him in regard to the recording of evidence in the Criminal Courts had nothing whatever to do with the pleadings or with the language of the pleadings or proceedings. The question as to what should be the language of the pleadings or of the proceedings was altogether a distinct one, and was in no way involved in the amendment of Section 302 now proposed by him.

MR. ERSKINE resumed—The statement of the Honorable Member contained no answer to the question he had asked. And he could not but believe, therefore, that if the Criminal Courts were now relieved of all obligation to keep accurate vernacular records of their proceedings, the plan might soon be introduced into some Provinces of conducting trials by means of interpreters and of hearing all the arguments of Counsel in English. The policy which tended to that consummation might be wise or might be unwise; but, at all events, the opinions of many able and experienced men, not prejudiced against reforms in general, were so strongly opposed to it, that he hoped all Honorable Members would fully weigh their objections. He could not refrain from reading—in this conviction—one passage from a book which he happened to have at hand. It was as follows :—

"About the year 1835 the Government of India restored to the natives, after six centuries of disuse, their own language in the transaction of their own business ; and, at present, Bengalee is universally employed throughout the Courts in Bengal, and Hindostanee in the Courts in the North-Western Provinces. This innovation has been exceedingly popular among the natives ; perhaps it is a more popular measure than any that we have ever introduced in India ; and I think that any attempt to abolish the use of the Bengalee language, and to introduce English into the Courts, would not only be exceedingly unpopular, but that it would create a degree of disaffection which the Government would be very sorry to encounter. At the same time it would unquestionably impair the administration of justice."

That was the opinion given by a gentleman of large experience in Bengal, Mr. Marshman, before a Committee of the House of Lords. The book also contained the opinion of a gentleman of much ability and experience in Madras, Mr. Norton. He said—in regard to making English the language of the Courts—

"I can scarcely conceive any thing more unfair to the people at large.* * *

* * Every Court should conduct its proceedings in the vernacular of the District; nor would I permit a Judge, whether Barrister or Civilian, to sit on the Bench, unless he had a good colloquial familiarity with the spoken language of the lower orders. Indeed, I think it very questionable whether a pleader in the Mofussil ought to be allowed to plead in English. I have done it myself, and can see what a disadvantage it places the opponent under."

And in another place Mr. Norton said—

* "Perhaps it is intended to limit the use of English to the mere record and pleadings. But here, we should still have to give translations of all proceedings, &c., to the suitors or their pleaders in the Native languages; and this idea which is now abroad is precisely one of those dangerous innovations which the reformer will do well to resist."

He (Mr. Erskine) had no personal experience of the system of procedure either in Bengal or Madras. But his experience of the system in Bombay led him to entertain a strong conviction in favor of the view supported by the gentlemen whose opinions he had just read. This conviction had been further strengthened by arguments which had been ably urged in Bombay since the question had been raised in the Council in connection with amendments formerly proposed by the Honorable Member, North-Western Provinces. He (Mr. Erskine) therefore could not regard the amendment contained in Section 162*a* without considerable apprehension—and could only trust that, if it should be adopted by the Council, it might not be productive of as much inconvenience and evil as he—in common with many officers of great experience—could not but apprehend.

MR. HARINGTON would ask the Honorable Member for Bombay whether he desired to open the whole question in regard to the taking of evidence in the Criminal Courts including the Courts of the Magistrates, the Sections applicable to which Courts had already been settled by the Committee, or whether his present objections had reference only to the manner in which it was proposed that evidence might be taken in the Courts of Session.

MR. ERSKINE said that his object, as he had already stated, was not to reopen the question as to the inferior Courts, but to explain the reasons of the strong objection he entertained to the proposed change in connection with the Courts of Session.

MR. HARINGTON said, he was anxious to read to the Committee the opinions which had been expressed by the late Honorable Member for Bombay on the question now under discussion, but he could not just now lay his hand upon the report in which those opinions were contained. He must repeat that the Section proposed by him was entirely permissive in its character. It would rest with the local Governments to extend the provisions of the Section to the whole or any part of the Territories subordinate to them, or to take no action upon the Section, according as they might think fit. The Committee had already given this power to the local Governments in regard to the Courts of the Magistrates, and he did not see how they could consistently refuse to give it in respect to the Courts of Session also. The practice proposed would be as proper in the one class of Courts as in the other, and of the two classes of Courts he considered it more suitable to the Courts of Session.

THE CHAIRMAN said, he thought there could be no objection to the Section now proposed, the others having been passed; and it appeared to him that no danger need be apprehended. There would be this safeguard, that the evidence must be interpreted in open Court to the witnesses in the presence of the accused. Practically, therefore, the system would be very much that which was adopted in the Supreme Court where, although the language of the Court was English, and the proceedings were recorded in English, the whole of the evidence was interpreted to the witnesses in the presence of the accused; and there could be no objection to allowing this practice to be followed in places to which the local Government might think fit to extend the provisions of the Sections in question.

MR. ERSKINE said, there were three important points in which the

position of the Mofussil Courts differed greatly from that of the Supreme Court in respect to the use of the English language. The first was this; that in the Supreme Courts all the evidence was given in the sight and hearing of the very persons—Jurors or Judges—who were to decide finally on the case. In the Mofussil Courts this was not so; and if the Session Judge's notes were to be the only record, Courts of review would, in his (Mr. Erskine's) opinion, be in a very unsatisfactory position. The second point of difference was, that the Supreme Courts being few in number, of great importance, and located in the Presidency towns were enabled to secure as interpreters men of high ability and uprightness. But it would be impossible to offer salaries to interpreters in Mofussil Courts which would secure the same class of persons there. Moreover, in the third place, the check of publicity would hardly operate at all in the Mofussil. Hardly ever would any one who understood what a witness had said to the interpreter, understand also what the interpreter reported to the Court. Hardly ever would an accused person, or any one connected with him, know what information reached the ears of the Judge or what arguments were addressed to him by Counsel. The check of anything like public opinion would therefore be almost entirely unfelt in the Mofussil by pleaders and interpreters.

MR. FORBES said, with reference to a remark which had fallen from the Honorable Member for Bombay regarding the changes that would follow if the proposed mode of taking evidence were adopted, that one of these supposed changes—namely, that of the Sudder Court no longer having before it in referred trials the actual words spoken at the original trial—would not be so general in its operation as the Honorable Member appeared to suppose. In the Madras Presidency all referred trials were even now sent up to the Sudder in English, and in this respect therefore the proposed amendment would, if adopted, work no change in the South of India.

SIR BARTLE FRERE said, he should support his Honorable friend the Member for Bombay in opposing the proposed Section. But he thought he might have gone further and claimed the Supreme Court as an instance in support of his case. In the Supreme Court, English was the language of the Judge, of the Bar, of the Press, and of the greater and more intelligent portion of the public. If you desired to choose a language which would serve as a most effectual check upon the proceedings and ensure the greatest publicity, you would say that in the Supreme Courts that language was English, whereas in the Mofussil it would be the vernacular of the District. He felt strongly in unison with his Honorable friend, because he had seen two instances of the benefits which resulted from observing the principle laid down by his Honorable friend. One was in the Southern Mahratta country, where Canarese, the language of the people, had been substituted for Mahratta, a comparatively foreign language, which was formerly the official language; and the other was in Sind, where Persian was abolished as the language of the Courts, and Sindee substituted for it. In both cases it was impossible to overstate the good effect of the change on the feelings of the people with regard to the Courts when they found that the whole of the proceedings were conducted in their own mother-tongue. If, therefore, the Honorable Member for Bombay went to a division, he (Sir Bartle Frere) should vote with him.

MR. HARINGTON said, one of the objections made to the mode in which evidence was now taken in the Criminal Courts was that the duty was left to be performed without any sufficient supervision or check by an inferior and underpaid ministerial officer, who, from ignorance of the language of the witness, or from some other cause, often misrepresented what the witness said, and that consequently little reliance could be placed on the evidence so recorded. The amendment proposed by him contemplated the substitution of the Judge or Magistrate of the Court in which the evidence was taken for

recording the same. This would at once remove all ground of complaint, and it was considered by many that in no other way could an effectual remedy be applied so as to get rid of the objection which he had noticed. He had now found the remarks of the late Honorable Member for Bombay to which he had alluded in an earlier part of this debate, and with the permission of the Committee he would read a portion of them. It must be remembered that Mr. LeGeyt, by whom these remarks were made, was a Judge in the Sudder Court of Bombay for no less a period than 14 years, during which, according to the practice of the Bombay Presidency he made frequent tours or circuits, and what he stated was the result of his own observation. He was sure that after what had fallen to-day from the present Honorable Member for Bombay and the Honorable Member of the Government on his left (Sir Bartle Frere), they would excuse his quoting the opinion of the former Honorable Member for Bombay on the question before the Committee, which differed so materially from their own views upon that question. Mr. LeGeyt said :—

"He had not yet given up all hope of what he considered ought to be the mode of recording evidence in the Criminal Courts at least, if not also in the Civil. What he proposed to have done was that the witness should be brought into Court and examined, that he should orally depose what he knew of the case, and that the Judge should immediately write with his own hand, or, if he should be unable from sickness or any other cause to do so, cause to be written a careful note of what the witness did say. That note should be carefully explained to the witness in his vernacular language and signed by him; and it would then, as he (Mr. LeGeyt) contended, form a much better record than the kind of deposition that was now taken. It had been for many years the practice, he would not say of every Court, but certainly of several Courts in Bombay at least, to take down the evidence of witnesses in a most slovenly manner. When Commissioners went round on their tours of inspection, the subordinate Courts were careful to do everything according to proper form and order; but there was too much reason to believe that, not only in the subordinate but also in the higher Courts, when a witness had a long statement to make, a very imperfect and hasty outline of it was taken down by some sheristadar. He was then asked whether he had stated what appeared on the paper, and in almost every case his answer was 'Yes,' his chief wish being to get away from the irksome state in which he had been during the whole time that his statement was being extracted from him. On such a record it was impossible that any confidence could be placed by any Court of Justice. He (Mr. LeGeyt) contended that, if the appellate Courts had the Judge's own notes before them, they would be a more trust-worthy record of what had been said by the witnesses than any which they now had."

The amendment to which he (Mr. Harington) had asked the Committee to agree, proposed, in whatever District the Sections as framed by him were introduced, to substitute for the slovenly recorded evidence of which Mr. LeGeyt complained and on which he declared it was impossible that any confidence could be placed by any Court of Justice, a record of the evidence so made that it would be entitled to the fullest confidence.

MR. ERSKINE said, he had not the least wish to deprive the Honorable Member for the North-Western Provinces of the full benefit of the testimony which he had just adduced. He could only repeat that his own judgment was very different. In all that had been said indeed regarding the propriety of obliging a Judge to take full notes of the evidence with his own hand, he (Mr. Erskine) heartily concurred with the Honorable Member and had always expressed his concurrence. The point on which they differed was as to the propriety of dispensing with a further complete record in the language of the people. In every case tried by a Judge of ordinary capacity in Bombay, an English record was kept by him; and it was generally as full or nearly as full as its native counterpart. With reference to the opinion quoted by the Honorable Member that the vernacular records in such trials were often very slovenly, he (Mr. Erskine) could only say that this did not accord with his experience, and that there could be no reason why the Judge should not take care that the evidence set forth in the vernacular record should contain the exact words of each witness, just as certainly and carefully as he could provide that his

own notes should contain an exact translation of those words.

SIR CHARLES JACKSON said, he really thought he must fall a victim to the *cacoëthes loquendi* at this late hour. The Honorable Member for Bombay had put his objection to the proposed Section on three grounds, on which he had drawn a distinction between the Supreme Court and the Mofussil Courts. The first was that in the Supreme Court the Judges decided criminal cases finally. That was not so, for a criminal case might be sent up to the Privy Council; and though such a thing seldom happened, yet it had occurred once since he had been on the Bench in Calcutta, and there had been several appeals from Bombay, and he knew that sentences were occasionally reversed by the Privy Council. The next ground was that an inferior class of interpreters would be employed in the Mofussil Courts, and that in many places it would be impossible to obtain good interpreters. Should that be so, he (Sir Charles Jackson) thought the Government would never extend the system to such places. Then the Honorable Member said that there was greater publicity in the Supreme Court. But he (Sir Charles Jackson) thought that there would be just as much publicity under this Act, for the translation ensured what was said being spoken in two languages, and he thought that secured greater publicity than the use of one language only. Great publicity was given to what was said in the Supreme Court, and it would be the same in the High Court.

The Section was then put, and the Council divided as follows :—

Ayes 5.	*Noes* 3.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Sir Robert Napier.
Mr. Forbes.	Sir Bartle Frere.
Mr. Harington.	
The Chairman.	

So the Section was carried.

The postponed Section 315 provided as follows :—

"If the accused person is acquitted the Court shall record a judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence upon him according to law. Provided that if the Court pass sentence of death the sentence shall not be executed without the confirmation of the Sudder Court."

The Section was passed after the addition of the following words, on the Motion of Mr. Harington :—

"If the accused person shall be convicted of an offence which by the Indian Penal Code is punishable with death, and the Court shall sentence such person to any punishment other than death, the Court shall state the grounds upon which it remitted the punishment of death in the statement of trials to be periodically submitted to the Sudder Court, as hereinafter required, under the head of 'Sentences passed upon the accused persons.'"

A verbal amendment was made in Section 323, on the motion of Mr. Harington.

MR. HARINGTON said, after the discussion which had incidentally arisen on Chapter X at the last meeting of the Committee, he thought that whatever views Honorable Members might individually entertain, there must be a general concurrence of opinion that the Chapter could not be allowed to remain as it at present stood, and that some modification was called for. What alterations should be made in the Chapter might, he thought, be better and more conveniently considered in the first instance by a Select Committee, and he begged to move that a Select Committee be appointed consisting of the Honorable and learned Vice-President, the Honorable Members for Madras, Bombay, and Bengal, and the Mover, and that the Committee be instructed to consider and report upon the Chapter and propose any alterations in it which might appear to them advisable. If the Honorable and learned Judge opposite (Sir Charles Jackson) would join the Committee, he (Mr. Harington) would gladly make room for him by withdrawing himself.

THE CHAIRMAN said, he saw no necessity for referring the Chapter to a Select Committee, and thought that it would be better to consider it in a Committee of the whole Council. For his own part, he was so fully occupied with his duties

at the Court that he did not know whether he would be able to attend the Committee except on Saturday, in which case he should be obliged to give up to the Select Committee a portion of his time which would be better devoted to the consideration of the question in Committee of the whole Council.

SIR BARTLE FRERE said, he would much prefer the course suggested by the Honorable Member for the North-Western Provinces. He did not think that at this late hour the Council could go into this question. Since last Saturday he had gone carefully into the question which had been so unexpectedly raised by the Honorable and learned Vice-President, and he found that the view which he had before taken of it was the right one, namely, that the law as regarded contempts committed before Civil Courts should continue as it was laid down in Act XXX of 1841, that there was no necessity for going beyond it as regarded the Civil Courts, and that it would provide for all the objects which we had in view. Any innovation or alteration of the existing law was certainly not of his seeking. All that he wished to see was a continuance of the existing practice, which was in strict accordance with the practice obtaining in the Supreme Court, that is, as nearly as could be in Courts of such different constitution and he did not wish that practice in the least departed from. He believed some Honorable Members who took great interest in the matter had met twice for the purpose of considering how they might best include the provisions of the existing law, Act XXX of 1841, in the present Bill but they had not agreed as to how it had best be done. He (Sir Bartle Frere) entirely concurred in the view taken by the Honorable Member for Bombay, and it appeared to them that probably a very short discussion with one of the Judges of the Supreme Court over the table would enable them to come to a unanimous conclusion sooner than if the matter was considered in Committee of whole Council. He had not the least objection to go into Committee upon it next Saturday, but he thought that considerable time would be saved if the course suggested by the Honorable Member for the North-Western Provinces were followed.

SIR CHARLES JACKSON said, that the Judges were now very busy, and were obliged to sit daily till 6 o'clock, when it was scarcely possible they could be in a fit state for any further business.

SIR BARTLE FRERE said, that other Honorable Members had their work to attend to as well as the Judges. An hour over a table would save what would take five hours in the Council at large, and it was solely with a view to save time that he supported the suggestion of the Honorable Member for the North-Western Provinces.

MR. HARINGTON said, after what had been stated by the Honorable and learned Vice-President, he could not, of course, think of pressing his Motion. The fact was that it was chiefly in consequence of what had fallen from the Honorable and learned Vice-President on Saturday last, that doubts had arisen in the minds of himself and other Honorable Members on the subject of the Chapter in question. Before the discussion to which he had referred arose, he had looked upon the Chapter as finally settled. He thought every Honorable Member must have done the same, and he certainly had no intention of going back to the Chapter and moving any alteration in it. But after the remarks of the Honorable and learned Vice-President, it was felt by himself and other Honorable Members that something must be done to remove what was considered objectionable in the Chapter. Though not appointed a Select Committee, he and the other Honorable Members to whom he had alluded, had met twice during the week to consider and discuss the Chapter. Various propositions were made, but no one of them was unanimously assented to; and it not being found possible to reconcile the differences of opinion that existed on a most material point, no satisfactory result had ensued. Under these circumstances it had oc-

curred to him that, in order to save the time of the Council, it was desirable that a Select Committee should be appointed to reconsider the Chapter. With the assistance and advice of the Honorable and learned Vice-President on such a Committee, he (Mr. Harington) hoped that some Sections would be framed which would be readily agreed to by the Council at large and would satisfy the public. It was for this reason that he had moved for the appointment of a Select Committee. But, as he had already observed, he would not press the motion after what had been stated by the Honorable and learned Vice-President. He had prepared some Sections to take the place of Chapter X, to which he thought no reasonable objection could be urged, and he should do himself the honor of proposing these Sections for adoption on Saturday next.

The Motion was then by leave withdrawn; and the consideration of the Bill having been postponed, the Council resumed its sitting.

The Council adjourned.

Saturday, August 10, 1861.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere, *Senior* Member of the Council of the Governor-General, presiding.

Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	
C. J. Erskine, Esq.,	

CRIMINAL PROCEDURE.

THE CLERK presented to the Council, a Petition from the Landholders' and Commercial Association of British India and of the Calcutta Trades Association, praying for a modification of the Clause, which had been inserted in the Bill for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter, giving all the Civil Courts in the Mofussil, in cases when the offence of contempt was committed, power to take cognizance of the same and to adjudge the offender to punishment as authorized by the several Sections of the Penal Code applicable thereto.

SIR CHARLES JACKSON moved that the Petition be read.

MR. HARINGTON said that, having regard to what was the usual practice of the Council, he considered that this was not the proper time for reading this Petition. He would suggest that the reading of the Petition be deferred until they went into Committee on the Criminal Procedure Bill to which the Petition related. That would be the proper time for reading the Petition. He had not read the Petition, but, understanding that it referred to Chapter X of the Code, he begged to remind the Council that he had given notice of some amendments in that Chapter.

SIR CHARLES JACKSON said, he would rather that the Petition were read now.

The Motion was carried, and the Petition read accordingly.

SIR CHARLES JACKSON moved that the Petition be printed.

Agreed to.

MR. ERSKINE said that, as some misconception seemed to prevail with regard to the purport of a Section which he had introduced a fortnight ago, and as the Petition which had just been read contained an expression which, unless he was mistaken, might be intended to refer to that Section; perhaps it might be well that he should at once say one or two words on the subject. It was not his purpose, of course, to enter at that time on the general question as to the manner in which contempts of Court should be punished. That question would be more properly and more satisfactorily discussed when the Honorable Member for the North-Western Provinces should bring the whole Chapter relating to contempts, in an earlier part of the Code, once more under the consideration of the whole Council—as he had engaged to do. But it seemed to be supposed in some quarters that the Section prepared by Mr. Sconce for insertion in the Chapter relative to

appeals, and proposed to the Council a fortnight ago by himself (Mr. Erskine), contained some proposal for enhancing the powers of certain Courts in dealing with contempts committed by certain classes of persons; and that the Section for that reason had been strenuously opposed by some Honorable Members of the Council. He need hardly remind any Honorable Member then present, or, indeed, any one who had read the Section referred to, that this supposition was altogether erroneous; that the Section did not relate to the original jurisdiction of any Court, or propose to extend the powers of punishment of any Court in respect to contempts; that, on the contrary, it was expressly intended to provide a remedy against possible abuses of the powers assigned in a former Chapter to different classes of Civil Courts, by opening up a way of appeal in all cases; and that, in this view, the Section had been adopted by the Council without a division. He was not aware that any other new Section, which could be supposed to have the effect described in the Petition, had been recently introduced by any other Honorable Member. The general discussion which took place about a fortnight ago, when the Section moved by him (Mr. Erskine) was agreed to, had certainly convinced him—and, he believed, had convinced most Members of the Council—that the Chapter relating to contempts, which had been passed some weeks before, required to be thoroughly revised and re-cast. But the Honorable Member for the North-Western Provinces had already undertaken to submit to the Council an amended Chapter X; and he trusted that, when those amendments should have been carefully considered and discussed, the result would be the enactment of provisions relating to contempts, to which no reasonable objection could be made.

SIR BARTLE FRERE said, he greatly regretted that the Honorable and learned Vice-President was prevented by illness from being in his place to-day. Had he been here, he could have better explained the misconception under which the gentlemen who had presented this Petition appeared to have been laboring. He (the Vice-President) would have been able to point out that every part of the Code which bore on this subject, as it stood to-day, was substantially as it left his hands when he was the Legislative Member of the Supreme Council. The law relating to contempts in Civil Courts, to which this Petition particularly referred, was Act XXX of 1841. That law gave Civil Courts the power of fine up to two hundred Rupees and simple imprisonment up to one month; and when this question was last under discussion, he (Sir Bartle Frere) distinctly stated that nothing further was required in his opinion by the Civil Courts than a continuance of that power. In all that was pointed out in the Petition as to that law having been in force for nearly twenty years without its provisions having been complained of either as not being sufficiently stringent or as giving too much power, he entirely concurred, as he had always done. The question of any alteration or enhancement of the punishment prescribed in the existing law, for contempt in Civil Courts, had been raised, and criminal imprisonment for such contempts had been proposed, not by him (Sir Bartle Frere) or by any Member of the Executive Council, but by the Honorable and learned Vice-President himself. In all that the Petitioners required on this point, he (Sir Bartle Frere) entirely went with them, and he was ready to vote for any measure which would give effect to those views.

But there was one paragraph of the Petition which he thought it only due to the Government to notice, though it did not relate to this portion of the Act under discussion. It was that paragraph in which they said—

"That the views of the independent European community with regard to the great injustice of any measure of this character or tendency have been so frequently expressed that your petitioners consider it unnecessary to recapitulate them. Your petitioners, however, would humbly submit that the frequent attempts which have been made of late to subject Europeans to the Mofussil Criminal Courts

and Native Magistrates, and the warm support which such a proposal invariably receives whenever it is brought forward, are calculated seriously to discourage the settlement of Englishmen in the interior, and to awaken in their minds grave distrust and suspicion of the policy of Government."

Now these were words of very considerable import, coming as they did from a body of such respectable gentlemen who represented the Landed and Commercial interests of this Province; and he should be sorry indeed to think that anything which the Government had done gave color to the apprehensions which they had expressed. He knew of no act of the Government of India, certainly of no late act, or of any which had been done since he had had the honor of holding a seat in the Government of India, to justify any such apprehensions. The policy of the Government of India for many years past was in accordance with the words of the Charter Act of 1833 which had been so often quoted and which could not be too often repeated. They were :—

"And be it enacted that no native of the said territories, nor any natural born subject of Her Majesty resident therein, shall by reason only of his religion, place of birth, descent, color, or any of them, be disabled from holding any place, office, or employment under the said Company."

These views were repeated in Her Majesty's Proclamation of the 1st November 1858, where she said :—

"We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects;"

and then went on to say :—

"And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity, duly to discharge."

These words justly represented the policy which it was the wish of the Government of India to carry out. But they were not the words of the Government of India. They were the words of the Sovereign of England and of the Legislature of England, embodying the views of some of the greatest statesmen and philanthropists of modern days, men whose memories would be cherished as long as the English language and the English nation should endure. The policy thus enunciated was not for India only. It was a part of that system which had made England the example and envy of all other free people, the wonder and the dread of all despots. It was a policy which he believed could never be reversed as long as England continued to hold her foremost place among the nations of the earth. The Government of India further believed that the words he had quoted described the policy calculated not only to secure the peace and prosperity of the many nations of India, but to give to the industrious and enterprising Englishman free scope as a settler in this country. They believed that, by acting on this policy, Government would best secure the profitable residence of Europeans in every part of this country, so that the English settler could apply his energy and capital and bring those kindly and humane feelings and that love of justice which are inherent in his race to bear upon the moral and material advancement of India. There were other observations on this subject which he would not, in the absence of the Honorable and learned Vice-President, obtrude on the Council. He would only further add that, in the belief that the policy embodied in the words of the Charter Act and of the Proclamation which he had quoted was the best for India, it was the purpose of the Government of India firmly to act on it through good report and through evil report, as long as God would give them power and strength to carry it out; and in so doing the Government were fully confident that they would secure the assistance of all right hearted Englishmen whether they belonged to the official or non-official class.

REGISTRATION OF ASSURANCES.

MR. FORBES presented the Report of the Select Committee on the Bill

"to provide for the Registration of Assurances."

LIMITATION OF SUITS.

SIR CHARLES JACKSON, in the absence of the Vice-President, postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill to amend Act XIV of 1859 (to provide for the limitation of suits).

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter", the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON said he would ask the Committee to go back to Section 318 which prescribed the forms of finding and sentence. It would be in the recollection of the Committee that considerable alterations had been made in the Chapter relating to Juries, and the amendments which he proposed to introduce in Section 318 were simply intended to carry out the alterations made in that Chapter. They involved no change in the substantive law as settled by the Committee, and related only to the forms in which the finding of the Jury was to be delivered and the sentence of the Court recorded.

SIR BARTLE FRERE asked if the Committee could not proceed with the consideration of Chapter X.

MR. HARINGTON said that he had given notice of some amendments in this Chapter; but he thought it would be better to defer their consideration until Saturday next when they might hope that the Honorable and learned Vice-President would have recovered from the indisposition which had prevented his attendance today. After what had fallen from the Honorable Member of the Government (Sir Bartle Frere) and the Honorable Member for Bombay before they went into Committee upon this Bill, he was anxious that the amendments of which he had given notice should be read by the Clerk of the Council. They might then be allowed to lie over until the next meeting of the Committee. He did not wish to discuss the proposed amendments at this time, but he desired at once to correct a mistake into which he thought the Honorable Member of the Government (Sir Bartle Frere) who had spoken on the Petition which had been read to the Council to-day, had fallen in the remarks which he had made on that Petition. The reading of the Petition before they went into Committee upon the Bill to which it related, and the debate which had followed the perusal, were, he thought, somewhat irregular. It was customary when a petition relating to a Bill which was before a Committee of the whole Council was presented to the Council, to cause it to be read when the Council were sitting in Committee upon the particular Bill to which the Petition referred, and he could not understand why this practice had been departed from on the present occasion. But he would not dwell further upon the point. He understood the Honorable Member of the Government to say that no Member of the Executive Government had agreed to the punishment for contempts of Court being increased when the contempt was committed against a Civil Court, and the Honorable Member had expresssd himself as quite satisfied with the law as now in operation under which a fine of two hundred Rupees, commutable to one month's imprisonment in the Civil jail in default of payment, was the highest punishment that could be awarded. The Code of Criminal Procedure before the Committee did not deal with the question as to what were suitable punishments for the various classes of offences cognizable by the Courts. It was the Penal Code which defined the extent of punishment, and any increase in the penalty for contempts of Court was made in the Penal Code which was passed last year, not in the Criminal Procedure Code which was still under consideration. Now he believed he

was right in saying that when the Section of the Penal Code which treated of the offence of contempt of Court and provided the punishment for that offence, was adopted, every Member of the Executive Government who was present at the time, including the Honorable Chairman (Sir Bartle Frere), had voted for it. That Section applied equally to contempts against Civil and Criminal Courts, and having voted for the Section, he (Mr. Harington) was not at all prepared to say that the maximum punishment prescribed by the Section should never be awarded in any case of contempt against a Civil Court, much less that the punishment for contempt committed against the Civil Courts should be restricted to the provisions of the law of 1841. He had not gone into the question as to what Courts should administer the law. That was altogether a distinct question. But he was quite prepared to alter the Procedure Code so as to take away all reasonable ground of complaint against it and to do what was right and proper. The amendments prepared by him would remove many of the objections which had been stated in the Petition read to-day, to Chap.er X of the Code as it now stood. He hoped that those amendments would be adopted.

SIR CHARLES JACKSON said, he thought it would be better to go on with the other parts of the Code first, and postpone the consideration of Chapter X till Saturday next. He knew that the Honorable and learned Chief Justice had some definite views on the subject, and he thought it desirable that the Committee should avail themselves of his assistance in the matter.

SIR BARTLE FRERE suggested that it would save time if the Chapter could now be settled in the form in which the Committee were willing to pass it subject to any alterations or criticisms which the Honorable and learned Chief Justice might feel disposed to offer on Saturday next.

SIR CHARLES JACKSON said that the criticisms of the Honorable and learned Vice-President after the Chapter was settled, would be quite a different matter from the benefit of his advice and assistance during the discussion on the Chapter.

MR. HARINGTON said, he was quite prepared to go on with his amendments to-day. Personally he had no objection to the Committee proceeding with them at once; but he begged to call attention to the fact that the Committee were not now dealing with a part of the Code which had not yet been settled. What was proposed was to go back to a Chapter which had already been settled and to re-cast that Chapter. The Honorable and learned Vice-President was present when the Chapter was settled, and he believed he was right in saying that the only amendments which were made in the Chapter when it passed through Committee were made on the Motion of the Honorable and learned Vice-President. This was, he thought, an additional reason for their not going into the Chapter again to-day in the absence of the Honorable and learned Vice-President and making perhaps important alterations in it.

MR. SETON-KARR said that, looking to the important principles involved in this Chapter, to the animated discussion which took place on this head a fortnight ago, and to the part which the Honorable and learned Chief Justice had taken in the framing of the Chapter and in the discussion generally, he thought it would be advisable to postpone the consideration of this question until the Honorable and learned Chief Justice could attend, and he should accordingly vote for the postponement of the consideration of this Chapter.

MR. HARINGTON then proposed that his amendments should be read.

MR. ERSKINE said, he had no wish to interfere with any course of procedure which might be regarded as advantageous by the Council. But he confessed he did not quite see the object of allowing these amendments to be read at present if no discussion was to follow. That might have the appearance of pledging Honorable Members to the principles of those amendments.

MR. HARINGTON said that, if his amendments were merely put from the Chair to-day and no discussion took place upon them, he should not consider any Honorable Member pledged to or bound by a single word in the amendments. What he wished was that his amendments should appear to-day on the records of the Council. Having moved the amendments, which he was prepared to do without comment, he was quite willing at once to move that their further consideration be postponed until Saturday next.

MR. ERSKINE said, he had not the least wish to oppose the proposal of the Honorable Member on the conditions explained by him.

MR. HARINGTON then read the following Sections with the permission of the Committee; and having done so, he moved that the Sections be allowed to lie over until Saturday next:—

"When any such offence as is described in Section 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in any Court, Civil or Criminal, it shall be competent to such Court to cause the offender to be detained in custody, and at the rising of the Court to take cognizance of the offence, and the offender shall be liable to punishment as authorized by the said Sections. In any such case in which a Court subordinate to the chief Civil Court of original jurisdiction in the District, or in which any Magistrate exercising powers less than those of a Magistrate shall consider that the offender should be imprisoned, or that a fine of larger amount than 200 Rupees should be imposed upon him, such Court or Magistrate shall not pass sentence, but shall record the facts constituting the contempt with any statement the offender may make, and the finding thereupon, and shall refer the case to the Court or Magistrate to which such Court or Magistrate is subordinate. The Court or Magistrate to which the case is referred shall pass such sentence or order as to such Court or Magistrate shall seem proper and which shall be according to law. When a case is referred under this Section, the offender shall be detained in custody until the decision of the Superior Court is made known, or may be admitted to bail if sufficient bail be tendered for his appearance when required. The imprisonment adjudged under this Section shall be in the Civil jail.

When a person has been sentenced to punishment, or whose case has been referred, under the last preceding Section, for refusing or omitting to do any thing which he was required to do, it shall be competent to the Court to remit the punishment, or, in case of reference, to discharge the offender on the submission of the offender to the order or requisition of such Court.

When any such offence as is described in Chapter X of the Indian Penal Code, except Sections 175, 178, 179, and 180, is committed in contempt of the lawful authority of any Court, Civil or Criminal, by a European British subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence, which are vested by the Statute 53, George III, c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender on conviction in the same manner as is provided in that behalf in the said Statute, If such Magistrate shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature. If the Judge or Magistrate of the Court against which the offence is committed is not a Justice of the Peace, he shall send the offender to a Justice of the Peace to be dealt with under this Section."

SIR BARTLE FRERE thought that they should be very much expediting matters by proceeding to vote on the Sections now, reserving to themselves the power of altering them next Saturday, should they be disposed to do so after hearing the criticisms of the Honorable and learned Vice-President.

MR. FORBES said that he was in favor of postponing the consideration of the Chapter till next Saturday. He thought that the Honorable Member for the North-West had referred to a point of some importance in saying that the Honorable and learned Vice-President had himself drawn up the whole of the Chapter which it was now proposed that they should amend. In his (Mr Forbes') opinion it would be hardly courteous to the Honorable and learned Chief Justice, who had taken great interest in the matter, to alter the Chapter in his absence.

SIR BARTLE FRERE said, as the Honorable Member for Madras thought it would be discourteous to the Honorable and learned Chief Justice if the Committee were now to proceed with

the revision of Chapter X, there was an end of the matter.

The consideration of the Chapter was accordingly postponed.

MR. ERSKINE moved the insertion of the following Clause in Section 3, the object of which was to reserve the powers of Assistant Sessions Judges:—

"It shall be lawful for a Sessions Judge in the Presidency of Bombay to delegate cases for trial by an Assistant Sessions Judge: and such Assistant Sessions Judge shall be competent in such cases to pass sentences within the following limits:—Imprisonment of either description—for a term not exceeding seven years (including such solitary confinement as is authorised by law), or fine, or both. If the sentence be one of imprisonment for a term exceeding three years, it shall be passed subject to confirmation by the Sessions Judge. The Sessions Judge may review and hear appeals against the proceedings of his assistants, and may confirm and amend (but not so as to enhance), or may reverse their sentences or orders. It shall not be competent to an Assistant Sessions Judge to review or hear an appeal against the proceedings of a Magistrate."

Agreed to.

MR. HARINGTON said, he was anxious to move the introduction, after Section 36, of two Sections of which he had given notice. The object of those Sections was to extend to this country what was known as Lord Campbell's Act relating to thefts, embezzlement, and other similar offences. The Sections were as follows:—

"If, upon the trial of any person charged with the offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code, or of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of criminal breach of trust under Section 405 of the said Code, or of criminal breach of trust as a carrier wharfinger or warehouse-keeper under Section 407 of the said Code, or of criminal breach of trust as a clerk or servant under Section 408 of the said Code, or of criminal breach of trust as a public servant or as a banker merchant or agent under Section 409 of the said Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or of theft in any building tent or vessel under Section 380 of the said Code, or of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, he shall not be entitled to be acquitted, but the Court, or Jury, in cases tried by Jury shall be at liberty to return as their finding that such person is not guilty of the offence charged, but is guilty of the said other offence under the said Section 378, Section 380, or Section 381, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

In like manner, if, upon the trial of any person charged with the offence of theft under the said Section 378 of the said Code, or the offence of theft in a building tent or vessel under the said Section 380 of the said Code, or of theft as a clerk or servant of property in the possession of his master under the said Section 381 of the said Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of dishonest misappropriation of property under the said Section 403, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under the said Section 404, or the offence of criminal breach of trust under the said Section 405, or the offence of criminal breach of trust as a carrier wharfinger or warehouse-keeper under the said Section 407, or the offence of criminal breach of trust as a clerk or servant under the said Section 408, or of criminal breach of trust as a public servant or as a banker merchant or agent under the said Section 409, he shall not be entitled to be acquitted, but the Court or Jury, in a case tried by Jury, shall return as their finding that such person is not guilty of the offence charged, but is guilty of the said other offence under the said Section 403, Section 404, Section 405, Section 407, Section 408, or Section 409, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been charged and found guilty under such Section, and no person tried for theft, dishonest misappropriation of property, or criminal breach of trust under any of the said Sections of the said Code, shall be liable to be afterwards prosecuted for theft, misappropriation of property, or criminal breach of trust under any of the said Sections hereinbefore mentioned upon the same facts."

MR. ERSKINE said, he did not desire to oppose the adoption of these Sections; indeed, as he had only received them last evening, it had been impossible for him to give them more than a passing consideration. He wished therefore rather to offer a suggestion with regard to them. He observed that Section 205 of the Code of Procedure allowed a Court at any stage of a trial to alter the charge; while Section 208 provided that, in all such cases of alteration, the accused person should have the right to recall and cross-examine any witness who

might have been examined. But the Sections now proposed, as he understood them, would give power to the Jury, even after they had retired to find their verdict, to bring in a fresh charge against the accused; who, in that case, although the charge would have been altered, could have no opportunity of altering or adding to his defence. For instance, a person might be charged with theft, and, though acquitted of that crime, might still be convicted, without further evidence and without being allowed to make a fresh defence, of criminal breach of trust of an aggravated kind. If that would be the effect of the Section, he thought it would require re-consideration.

SIR CHARLES JACKSON said, the principle of the amendment was not unknown to the English law. In the Criminal Procedure Act prepared by Lord Campbell, and extended to this country in 1852, there would be found a very similar provision. By Section 13 of that Act, if a person were tried for embezzlement and was found guilty of theft—or, *vice versâ*, if tried for theft and found guilty of embezzlement —the Jury might find him guilty of theft, though charged with embezzlement or, *vice versâ*, find him guilty of embezzlement though charged with theft. Now the principle was this. The evidence in such cases was generally of the same nature, and the accused person was required in either case to show how he became possessed of the missing property, and the variance was no surprize upon him. Section 208, however, seemed to him to apply to a different state of things. That Section provided that, in all cases of amendment or alteration of a charge, the accused person should be allowed to recall and cross-examine any witness who might have been examined for the prosecution; whereas this Section applied to cases where the charge was not altered or amended, but where the offence actually proved was very much of the same nature with that charged. But the principle of such a Clause required that it should be confined to cases of a very similar nature. It could not be applied to all cases. For instance, suppose a man was charged with cutting and wounding, and it turned out afterwards that the man whom he had wounded died: in serious cases of that kind this Section would not be applicable. But there should be a new charge, and the accused should be allowed to recall and cross-examine any witness. If the amendment now proposed had applied to indictments for trivial offences, such as that, for instance, of a servant who embezzled money which he ought to have paid to his master; in such a case the servant was bound to show how the money came into his hands; and whether he were tried for theft or embezzlement, there would be no great variance in the proof, and the line of defence would be much the same. The same might be said with regard to the other offences, into which the speaker went at some length.

MR. HARINGTON said, he should only injure his case if he attempted to add anything to the very able explanation of the Sections which had been given by the Honorable and learned Judge, and he was quite willing to rest his defence of the Sections upon what had been said in that explanation.

MR. SETON-KARR said that the doubt that occurred to him was, what precise state of things, or what particular stage of the trial, was contemplated by the Honorable Member for the North-Western Provinces in his amendment. As he read the Sections, he understood that they contemplated all the proceedings to have terminated and the Jury to be either on the point of retiring, or to have actually retired in order to consider their verdict. If this were the state of things, the same should be clearly understood, and there was no provision made for any recalling of witnesses or for calling for any further defence from the defendant.

SIR BARTLE FRERE said, it seemed to him necessary to provide that, if a man was charged with one offence and found guilty of another, the punishment should not be made heavier unless opportunity were given

to him to recall and re-examine the witnesses.

MR. HARINGTON explained that the punishments were the same.

After some further discussion—

MR. ERSKINE said, after the opinion expressed by the Honorable and learned Judge, he should not wish to press his objections now, but would reserve to himself the right of reverting to the subject, if necessary, on the recommittal of the Bill before the third reading.

MR. HARINGTON remarked that so many alterations had been made in the Bill in its passage through Committee, that he thought it would be advisable to reprint the Bill before it was read a third time. This would give Honorable Members time to consider the Bill as it now stood; and if any Honorable Member wished to propose any further amendments, he would have an opportunity of doing so by moving the recommitment of the Bill on the motion for the third reading.

Section 1 was then put and carried.

The consideration of Section 2 was postponed till Saturday next, on the Motion of Mr. Harington, who undertook to revise the Section with reference to the objections which had been taken to it as it now stood.

MR. HARINGTON said, he had undertaken on Saturday last to prepare, in communication with the Honorable Members for Madras, Bombay, and Bengal, a Section showing the cases in which an appeal should be allowed but in which no provision for an appeal had as yet been made. After carefully revising the Code, the Honorable Members just referred to concurred with him in thinking that an appeal should be allowed when a person was required by a Magistrate under Section 256 or 257 of this Code to give security for good behaviour, but they were agreed that in no other cases, not already provided for, should an appeal be permitted. He would therefore move that the following words be inserted in Section 335 which declared in what cases an appeal should lie from the sentences or orders of a Magistrate :—

"or required by such Magistrate or other Officer under Section 256 or 257 of this Act to give security for good behaviour."

Agreed to.

Section 4 of Chapter XIX*c*. (of disputes relating to the possession of land or the right of use of any land or water), which was as follows, was then omitted, on the Motion of Mr. Harington, as unnecessary with reference to Section 337 as amended, which declared that, unless otherwise provided by this Code or by any law for the time being in force, no appeal should lie from any order or sentence of a Criminal Court :—

"Any order made by the Magistrate or other Officer as aforesaid under this Chapter shall be final."

MR. HARINGTON said, he had given notice of another Section to follow Section 344. The proposed Section had reference to cases of the nature of those which they had just been discussing. But as the consideration of one of the Sections which related to these cases had been deferred until Saturday next, he would ask the Committee to allow him to postpone the consideration of this Section also until the same day. The Section was as follows :—

"No finding by a Court and no verdict of guilty by a Jury in a case tried by Jury of the offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code, or of dishonest misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of criminal breach of trust under Section 405 of the said Code, or of criminal breach of trust by a servant wharfinger or ware house-keeper under Section 407 of the said Code, or of criminal breach of trust as a clerk or servant under Section 408 of the said Code, or of criminal breach of trust as a public servant or as a banker merchant or agent under Section 409 of the said Code, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of theft under Section 378 of the said Code, or the offence of theft in a building tent or vessel under Section 380 of the said Code, or the offence of theft as a clerk or servant of property in the possession of his master under Sec-

tion 381 of the said Code; and no finding by a Court and no verdict of guilty by a Jury in a case tried by Jury of the offence of theft under the said Section 378, or of theft in a building tent or vessel under the said Section 380, or of theft as a clerk or servant of property in the possession of his master under the said Section 381, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of dishonest misappropriation of property under the said Section 403, or the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death under the said Section 404, or the offence of criminal breach of trust under the said Section 405, or the offence of criminal breach of trust as a carrier wharfinger or warehouse-keeper under the said Section 407, or the offence of criminal breach of trust as a clerk or servant under the said Section 408, or the offence of criminal breach of trust as a public servant or as a banker merchant or agent under the said Section 409."

Section 318 provided that, in trials by Jury, the finding and sentence should be recorded in the following form or to the same effect :—

"When the Jury are unanimous :

The Jury find that Z is guilty of the offence specified in the charge, namely, that Z has waged war against the Queen, and has thereby committed an offence punishable under Section 121 Chapter VI of Act XLV of 1860 (The Indian Penal Code); and the Court directs that the said Z [sentence.]

2nd. The Jury find that Z is not guilty of the offence specified in the charge, namely, that Z has waged war against the Queen and has thereby committed an offence punishable under Section 121 Chapter VI of Act XLV of 1860 (The Indian Penal Code); and the Court directs that the said Z be discharged.

When the Jury are not unanimous, but a majority of the Jurors concur in thinking the defendant guilty :—

3rd. A majority of the Jurors (stating the number) find that Z is guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 Chapter VI of Act XLV of 1860 (The Indian Penal Code). The Court concurs in such finding, and directs that the said Z be [sentence.]

4th. A majority of the Jurors (stating the number) find that Z is guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 Chapter VI of Act XLV of 1860 (The Indian Penal Code). The Court does not concur in such finding, and directs that the said Z be discharged.

5th. When the Jury are not unanimous, but a majority of the Jurors concur in thinking the defendant not guilty, the form No. 2 shall be followed.

When the Jury or a majority of the Jurors concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of a charge the offence falls :—

6th. The Jury or the majority of the Jurors (stating the number) as the case may be, find that Z is guilty either of the offence specified in the first head of the charge, or of the offence specified in the second head of the charge; namely, that Z has either committed theft, and has thereby committed an offence punishable under Section 379 of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under Section 406 of the same Chapter of the Penal Code. The Court directs [or, the Court concurs in such finding, and directs] that under the provisions of the above mentioned Sections, and the provisions of Section 72 of Act XLV of 1860 (The Indian Penal Code), the said Z be [sentence.]

When the Jury are equally divided in opinion, the finding and sentence of the Court shall be recorded in the following form or to the same effect :—

7th. The Jury are equally divided in opinion and the Court concurs with the Jurors who have found that Z is guilty of the offence specified in the charge, namely, that he has committed, &c., &c., and the Court directs that the said Z be [sentence]; or (as the case may be)—

8th. The Jury are equally divided in opinion and the Court concurs with the Jurors who have found that Z is not guilty of the offence specified in the charge, namely, that Z has committed, &c., &c.; and the Court directs that the said Z be discharged."

MR. HARINGTON moved the omission of the above and the substitution of the following, in consequence of the amendments lately adopted in the Chapter relating to Juries :—

"When the Jury are unanimous :

The Jury are unanimous in finding that Z is guilty of the offence specified in the charge, namely, that Z has waged war against the Queen and has thereby committed an offence punishable under Section 121 Chapter VI of the Indian Penal Code; and the Court directs that the said Z be [sentence.]

2nd. The Jury are unanimous in finding that Z is not guilty of the offence specified in the charge, namely, that Z has waged war against the Queen and has thereby committed an offence punishable under Section 121

Chapter VI of the Indian Penal Code ; and the Court directs that the said Z be discharged.

When the Jury are not unanimous, but such a majority as is required by Section 273 concur in finding the accused guilty :

3rd. A majority (stating the number, consisting of four out of five, or five or six out of seven, or six, seven, or eight out of nine, as the case may be) find that Z is guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 Chapter VI of the Indian Penal Code. The Court directs that the said Z be [sentence].

When the Jury are not unanimous, but such a majority as is required by Section 273 concur in finding the accused not guilty :

4th. A majority of the Jury (stating the number as above) find that Z is not guilty of the offence specified in the charge, namely, that Z has, with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 Chapter VI of the Indian Penal Code. The Court directs that the said Z be discharged.

When the Jury, or such a majority as is required by Section 273, concur in finding the accused guilty of an offence, but are doubtful under which of two heads of a charge the offence falls :

5th. The Jury, or a majority of the Jury (stating the number as above), find that Z is guilty either of the offence specified in the first head of the charge, or of the offence specified in the second head of the charge, namely, that Z has either committed theft, and has thereby committed an offence punishable under Section 379 of the Indian Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under Section 406 of the said Code. The Court directs that under the provisions of the abovementioned Sections, and the provisions of Section 72 of the Indian Penal Code, the said Z be [sentence].

When a majority less than the number required by Section 273, find the accused guilty :

6th. A majority of the Jury (stating the number as above,) find that Z is guilty of the offence specified in the charge, namely, that he has committed, &c., &c., the Court directs that the Jury be discharged, and that there be a new trial.

A similar form shall be followed if a verdict of not guilty is found by a majority less than is required by Section 273.

If the finding be on a second trial, and a majority less than is required by Section 273 find the accused guilty :

7th. A majority of the Jury (stating the number as above), find that Z is guilty of the offence specified in the charge, namely, that he has committed, &c., &c.,

This being a second trial under Section Act of 1861, the Court directs that the said Z be discharged."

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved the introduction of the following definition in Chapter I :—

"The word 'written' shall include 'printed,' 'lithographed,' or 'engraved'."

Agreed to.

The postponed definition of "Court of Session" was passed as it stood.

The Council then resumed its sitting.

CIVIL PROCEDURE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" ; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Section 1 (or the repealing Clause) was passed after the inclusion of Sections 339, 358, 375, and 381 of Act VIII of 1859 and of Section 10 Act XLII of 1860.

Sections 2 and 3 were passed as they stood.

Section 4 provided as follows :—

"If on the day fixed for the defendant to appear and answer to a suit it shall be found that the summons to the defendant has not been served in consequence of the failure of the plaintiff to deposit within the time allowed the sum required to defray the cost of issuing the summons, the Court may order that the suit be dismissed. Whenever a suit is dismissed under the provisions of this Section, the plaintiff shall be at liberty to institute a fresh suit, unless precluded by the rules for the limitation of actions, or if the plaintiff shall satisfy the Court within the period of thirty days from the date of the order that there was a sufficient excuse for his not making such deposit within

the time allowed, the Court may order a fresh summons to issue upon the plaint already filed."

MR. HARINGTON moved the omission of the latter part of the above Section commencing "Whenever a suit is dismissed," and the substitution of the following proviso :—

"Provided that no such order shall be passed although the summons shall not have been served upon the defendant, if on the day fixed for the defendant to appear and answer he shall have entered an appearance by a pleader or by a duly authorized agent when he is allowed to appear by agent or shall be in attendance in person.

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved the introduction of the following new Sections after the above. He observed that the first of these Sections was only a re-enactment, with some verbal amendments, of the latter part of Section 4 omitted above :—

"Whenever a suit is dismissed under the provisions of the last preceding Section, the plaintiff shall be at liberty to institute a fresh suit, unless precluded by the rules for the limitation of actions, or if the plaintiff shall satisfy the Court within the period of thirty days from the date of the order dismissing the suit that there was a sufficient excuse for his not making the deposit required within the time allowed, the Court may order a fresh summons to issue upon the plaint already filed.

The provisions of the last two Sections shall apply to appeals also.

Agreed to.

Sections 5 to 19 were passed as they stood.

Section 20 provided as follows :

"Cases referred for the opinion of the Sudder Court shall be dealt with by *a full Bench* of that Court."

MR. HARINGTON moved the substitution of the words "two or more Judges" for the words in italics.

The Motion was carried, and the Section as amended then passed.

Section 21 provided as follows :—

"The Sudder Court shall fix an early day for the hearing of the case, and shall notify the same by a proclamation to be fixed up in the Court-house of that Court."

MR. SETON-KARR would suggest that the time should be fixed. An early day was rather vague. One month should be the time allowed. As these cases were not very intricate, and as it was expedient that they should be decided speedily, one month would be time sufficient.

MR. HARINGTON said that the Section formed part of the existing law and was taken from the Small Cause Courts Act. He had no doubt that the words objected to by the Honorable Member for Bengal were well considered at the time they were adopted. Many words equally vague were to be found in our Regulations and Acts, such as "within a reasonable time"—"without unnecessary delay"—"with all convenient expedition." He would not tie the Sudder Court down as to time in the manner suggested by the Honorable Member for Bengal. He did not think it desirable to alter the wording of existing laws unless they could be shown to have worked badly in practice.

The Section was then passed as it stood

Section 22 provided as follows :—

"The parties to the case may appear and be heard in the Sudder Court in person or by pleader.

SIR CHARLES JACKSON proposed the insertion of the words "their Counsel or" before the word "pleader.

MR. FORBES said, this was a Bill to amend Act VIII of 1859 in which the word *Counsel* was not used. If used in one part of the Bill and not in another, difficulty might arise. It might be said that Counsel was allowed to appear in some cases, and pleaders only in others, and he thought that the Courts would be uncertain what the meaning of the Legislature was. The Bill now before the Committee was to be read as part of Act VIII of 1859, and should in his (Mr. Forbes') opinion be entirely consistent with it. It would not be consistent if in one Section Counsel and Pleaders were allowed to appear, and in another Section Pleaders only might, by implication, be heard ; and on this ground he objected to the proposed amendment.

SIR CHARLES JACKSON said that the introduction of a general Section would meet the objection of the Honorable Member for Madras.

MR. HARINGTON said that Section IV Act I of 1846, which was the law relating to pleaders in Courts not established by Royal Charter, enacted that "the office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion," and Section 5 provided that "every Barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sudder Courts," but "subject to all the rules in force in the said Sudder Courts applicable to Pleaders." This seemed to show that the Barristers of the Supreme Court, when they practised in the Sudder Court, appeared there as Pleaders. He saw no great necessity for the amendment proposed by the Honorable and learned Judge, though if the learned gentlemen to whom they were referring, preferred the designation of Counsel, he had no wish to deprive them of it.

After some further discussion, the consideration of the Section was postponed till Saturday next, when Sir Charles Jackson undertook to prepare and bring forward a Section which would raise the whole question.

Sections 23 and 24 were passed as they stood.

Section 25 was passed after verbal amendments.

MR. HARINGTON moved the introduction of the following new Sections after Section 25 :—

"When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the Court which pronounced the decree to require security to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof and for the due performance of the decree or order of the Appellate Court. The Appellate Court may in any such case direct the Court which pronounced the decree to take such security.

Unless when otherwise provided, the Appellate Court shall have the same powers in cases of appeal which are vested in the Courts of original jurisdiction in respect of original suits."

Agreed to.

Section 26 provided as follows :—

"The provisions of Act VIII of 1859 shall be applicable to all miscellaneous cases and proceedings which, after the passing of this Act, shall be instituted in any Court to which the said Act shall apply, so far as the same shall be applicable and necessary."

MR. HARINGTON moved the omission of the above Section with a view to the substitution of the following :—

"The procedure prescribed by Act VIII of 1859 shall be followed as far as it can be in all miscellaneous cases and proceedings which after the passing of this Act shall be instituted in any Court."

Agreed to.

Section 27 was passed as it stood.

MR. HARINGTON moved the introduction of the following new Section after Section 27 :—

"The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of that Court and the Courts subordinate to it, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force."

Agreed to.

MR. HARINGTON moved the introduction of the following new Section after Section 9 :—

"When a decree is passed in any suit of the nature and amount cognizable by Courts of Small Causes constituted under Act XLII of 1860, the Court passing the decree, whether such Court be a Court constituted as aforesaid or any other Court, may, at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, direct immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the personal property of the judgment-debtor within the same limits. If the warrant be directed against the personal property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any

personal property belonging to the judgment-debtor within the same limits which shall be indicated by the judgment-creditor."

Agreed to.

MR. HARINGTON said, he had undertaken on Saturday last, with reference to a suggestion made by the Honorable and learned Vice-President, to prepare a Section to the effect that no appeal should lie from any order or decision passed in any suit instituted under Section 15 Act XIV of 1859 (to provide for the limitation of suits). In consequence of the absence of the Honorable and learned Vice-President, he (Mr. Harington) would postpone the consideration of the Section till Saturday next.

MR. SETON-KARR moved that the following words be added to the new Section introduced, on the Motion of the Honorable Member for the North-Western Provinces, after Section 37 :—

"Any rules framed under this Section shall be published in the Official Gazette."

The object, of course, was to enable suitors and the subordinate Courts to become acquainted with the provisions of the rules, which were often as important as those of the law itself.

Agreed to.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

CATTLE TRESPASS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its setting, was reported.

FLOGGING.

MR. HARINGTON said, the Bill "to provide for the punishment of flogging in certain cases" stood next in the Orders of the Day for a Committee of the whole Council. It was not expected that the Bill would come on to-day, and he understood that some Honorable Members were not prepared to enter immediately upon the consideration of the Bill. It was not his wish to take any Honorable Member by surprise, and he was quite willing to move that the Committee of the whole Council upon the Bill be deferred until Saturday next on the expression of a wish by any Honorable Member that this should be done.

SIR CHARLES JACKSON expressed a wish that the consideration of the Bill should be postponed till Saturday next. He had received a letter from the Magistrate of Benares which he had left at home to-day, and which he should like to bring down and read to the Council.

The consideration of the Bill was then postponed, on the Motion of Mr. Harington, who gave notice that on Saturday next he should move that the Council resolve itself into a Committee on the Bill.

EXECUTION OF MOFUSSIL PROCESS.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed. In doing so, he said that a wish had been expressed that

the Bill should be re-published before it was read a third time. He proposed, therefore, after the Bill passed through a Committee of the whole Council, to move that it be re-published for six weeks.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MR. FORBES then moved that the Bill be re-published for a period of six weeks.

Agreed to.

PARSEES.

SIR BARTLE FRERE moved that the Report of the Select Committee on the Petition from the Parsees of Bombay with the draft of a Code of Laws adapted to the Parsee Community, be adopted.

Agreed to.

The Council adjourned.

Saturday, August 17, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

BRANCH RAILWAYS, &c.

THE CLERK presented to the Council a Petition from the Landholders and Commercial Association of British India, concerning the Bill "to provide for the construction, by Companies and by private persons, of Branch Railways, Iron Tram-roads, Common Roads, or Canals, as Feeders to public Railways."

MR. SETON-KARR moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

FLOGGING.

THE CLERK presented a Petition from the British Indian Association against the passing of the Bill "to provide for the punishment of flogging in certain cases."

MR. HARINGTON moved that the Petition be read at the table when the Council resolved itself into a Committee on the Bill.

THE VICE-PRESIDENT said, the Bill for the amendment of the Articles of War was set down in the Orders of the Day before the Bill for the punishment of flogging; and as the former was a long Bill, it would probably occupy the Council the whole day. He would suggest, therefore, that, instead of moving that the Petition be read when the Council went into Committee on the latter Bill, the better plan would be to move that it be printed.

MR. HARINGTON said that, in the event of the Bill for the punishment of flogging not coming on today, he would move at the close of the sitting that the Petition be printed.

The Motion to read the Petition was then put and carried.

CRIMINAL PROCEDURE.

THE CLERK also presented a Petition from the British Indian Association, praying for a republication of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARINGTON said, the republication of the Bill would cause great delay in its passing. They had certainly made many changes in the Bill as it passed through Committee, but they were chiefly verbal, and he did not know that any of them touched the more important principles in the Code. It was intended that the Code should take effect from the 1st January next, on which date the Indian Penal Code would come into operation, and there were only four months left for the translation of the Code and its publication and circulation.

THE VICE-PRESIDENT thought that it would be better to postpone

expressing any opinion on the subject, as to whether the Code should be republished or not, until the Bill passed through Committee of the whole Council. In the meantime, he begged to move that the Petition be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL).

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)."

MERCHANT SEAMEN.

MR. FORBES presented the Report of the Select Committee on the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen.)"

LIMITATION OF SUITS.

THE VICE-PRESIDENT moved the first reading of a Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)." He said it was not his intention, in doing so, to occupy the time of the Council with many remarks. The matter had been fully before the Council very recently, when the question arose as to whether the time for the Act coming into operation should be extended or not. The time for the commencement of the Act had been extended up to the 1st of January next. Since then Petitions had been presented to the Council, praying for an extension of the period of limitation concerning retail debts, and he himself had had the honor of being attended by several gentlemen belonging to the Trades Association of Calcutta, by whom he had been assured that the introduction of the law, as it now stood, would not only be a matter of inconvenience, but also a matter of serious loss to them. The Council were aware that, by Act XIV of 1859, if it should come into operation on the 1st of January without any amendment, the period of limitation for retail debts would be three years instead of six years in the Presidency Towns, and instead of twelve years in the Mofussil; and what the gentlemen who had waited on him, and the Petitioners, wanted was simply that the limitation should be extended, and that they should be allowed in this country, as in England, six years for the commencement of actions on account of retail Bills. They pointed out that many of their debtors were scattered over various parts of India, to whom it would be impossible for them to write so as to receive their answers in sufficient time before the 1st of January next, inasmuch as the addresses of many of them were unknown. The only course before them, therefore, would be to issue writs against such of their debtors as were within the limits of or otherwise subject to the jurisdiction of the Supreme Court, but considerable expense would necessarily be incurred in commencing these actions. At the same time they said that it was a matter wholly against their wish to commence actions against their constituents. Again, if they could not sue any of their debtors in the Supreme Court, they would have to follow them into the Mofussil Courts, a measure which would involve considerable inconvenience. On the whole it appeared to him that there was no great advantage in reducing the limitation from six to three years. When the Act was under discussion, he saw no objection to the reduction of the period of limitation to three years, and therefore he voted for the alteration from six years to three years. But when parties came forward and said that the alteration to three years would be productive of great inconvenience and loss to persons carrying on retail business, he thought it would be sufficient to reduce the period of limitation in the Mofussil from twelve years to that now existing in England, namely six years; and considering that the difficulties of communicating with and ascertaining the residence of parties in the Mofussil were much greater in India than in England, he proposed to fix the period generally at six years. It had been said that, by

such an amendment, the Council would be encouraging persons to give long credits. But that, he apprehended, was not the object of a law of limitation. The object was to prevent suits being brought after a very long period had elapsed when the witnesses to the transaction might not be forthcoming, or when the receipts or vouchers might be lost. This Bill had nothing to do with the question, whether tradesmen should give extensive credit or not. That was a question to be decided by the parties themselves. The Bill, as it stood, would not prevent a person from giving two or three or six years' credit, for the six years would not commence in the case of credit until the expiration of the period for which credit was given. It appeared to him therefore, on the whole, that it was quite reasonable to restore the period of limitation with regard to retail debts to six years in the Presidency Towns, and to reduce the period from twelve to six years in the Mofussil.

The Bill was read a first time.

CATTLE TRESPASS.

MR. HARINGTON moved that the Bill "to amend Act III of 1857 (relating to trespasses by cattle)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON moved the omission of Section 36*a*, and the substitution of the following Sections :—

"1. If upon the trial of any person charged with the offence of Criminal Breach of Trust under Section 405 of the Indian Penal Code, or of Criminal Breach of Trust as a carrier wharfinger or warehouse-keeper under Section 407 of the said Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under the said Section 378.

2. If upon the trial of any person charged with the offence of Criminal Breach of Trust as a clerk or servant under Section 408 of the Indian Penal Code, it shall be proved that such person took the property in question in any such manner as to amount to the offence of theft under Section 378 of the said Code, or the offence of theft as a clerk or servant of property in possession of his master under Section 381 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 378 or Section 381 as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

3. If upon the trial of any person charged with the offence of theft under the said Section 378 of the Indian Penal Code, or the offence of theft in a building tent or vessel under Section 380 of the said Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of Criminal misappropriation of property under Section 403 of the said Code, or the offence of Criminal Breach of Trust under Section 405 of the said Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by a Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the said offence under the said Section 403 or Section 405, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

4. If upon the trial of any person charged with the offence of theft as a clerk or servant of property in the possession of his master, under Section 381 of the Indian Penal Code, it shall be proved that he took the property in question in any such manner as to amount to the offence of Criminal misappropriation of property under Section 403 of the said Code, or the offence of Criminal misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of such Criminal misappropriation under the said Section 404, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of Criminal Breach of Trust under Section 405 of the said Code, or the offence of Criminal Breach of Trust as a clerk or servant under Section 408 of the said

The Vice-President

Code, he shall not be entitled to be acquitted, but the Court, or the Jury in a case tried by Jury, shall be at liberty to find that such person is not guilty of the offence charged, but is guilty of the offence under the said Section 403, Section 404, Section 405, or Section 408, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been found guilty upon a charge under such Section.

5. No person charged and tried for an offence under any Section of the Indian Penal Code in the last four Sections of this Act mentioned, and found guilty of another offence under the provisions of any other of the said Sections of the Indian Penal Code, shall be liable to be afterwards prosecuted upon the same facts under the Section under which he was charged, or under the Section under which he was found guilty."

Agreed to.

A verbal amendment was made in the definition of "Court of Session" in Section 1, on the Motion of Mr. Erskine.

The word "Constable" was inserted in Sections 97 and 131, on the Motion of Mr. Harington.

MR. HARINGTON said, before moving that the amendments in Chapter X, which he had read to the Committee on Saturday last, should now be taken into consideration and adopted, he must ask the indulgence of the Committee while he made a few remarks in explanation and in support of those amendments. He might preface what he had to say by repeating what he had stated on a former occasion, namely, that he believed they were all agreed that, after the discussion which had recently taken place on the subject of Chapter X, it was impossible that that Chapter could be allowed to remain as it was now framed. A reconsideration and revision of the Chapter had become a necessity and a duty which could not be avoided. He had hoped that the amendments prepared by him, before they were offered to the Committee of the whole Council for adoption, would have been considered and reported upon by a Select Committee, and that the Select Committee would have had the benefit of the advice and experience of the Honorable and learned Vice-President, and, perhaps, of the Honorable and learned Judge opposite (Sir Charles Jackson). Questions connected with the exercise of jurisdiction by the Mofussil Courts over European British subjects had again arisen very unexpectedly on the proposed introduction of a Section, the sole object of which, as explained by the Honorable Member for Bombay on Saturday last, was to give an appeal in cases falling under Chapter X; and when such questions were discussed, he thought that, for obvious reasons, it was most desirable that one or both of the legal Members of the Council should be present. Objections, the reasonableness of which he readily admitted, were taken to the Motion made by him for the appointment of a Select Committee to consider and report upon the Chapter in question, which led him to withdraw the Motion and to give notice of the amendments which, as already mentioned, were read to the Committee at their last meeting. He would now address himself to those amendments. In preparing these amendments, it had been necessary for him to keep carefully in view the provisions of the Indian Penal Code, which were referred to in Chapter X of the Procedure Code. These parts of the two Codes must, he thought, be taken and considered together. They formed, in fact, parts of a general Criminal law. There was a mutual relation between them, and the one part had a most important bearing upon the other. Up to the present time the heaviest punishment which could be awarded by any Court, from the Sudder Court downwards, for contempt of Court was, when the offence amounted only to contempt, a fine of 200 Rupees commutable, if not paid, to imprisonment in the Civil Jail for a period not exceeding one month. It mattered not against what Court the offence was committed. Whether it was committed against a Judge of the Sudder Court, or a Zillah Judge, or a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, or whether it was committed against a Magistrate, Joint Magistrate, Deputy Magistrate, or Assistant Magistrate, the law was the same. The punishment which he had mentioned could not be

exceeded. They had thus, to quote the words of the learned Advocate General of Bengal in a paper which had recently been circulated and which well repaid perusal, a criterion afforded them of the extent of fine and imprisonment which as a punishment for contempt of Court the Legislature of former days considered reasonable. At the same time it must be borne in mind that although the maximum punishment which under the law now in operation could be awarded for contempt of Court, might appear small, and in the case of the Higher Courts quite inadequate, the same amount of punishment could be awarded by the very lowest class of Courts, Civil and Criminal, whoever presided in them. Nor was this all. Every person, whatever might have been his place of birth, or however he might be descended, who was guilty of contempt of Court, although he might not be amenable to the general jurisdiction of the Court against which the offence was committed, was amenable to the jurisdiction of such Court in respect of this particular offence, and could be punished by such Court to the full extent provided by law. Section 1 Act XXX of 1841 said,—

"All persons whatsoever, whether generally amenable to the Courts of the East India Company or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any Zillah or City Magistrate, Joint Magistrate, or other officer under a Magistrate empowered to try Criminal cases, or any superior or inferior Court, Civil or Criminal, of the East India Company," &c.

There could, he thought, be no doubt that the framers of Act XXX of 1841 fully recognised the soundness of the principles upon which all legislation of the character of that Act had hitherto been based, whether in this country, at home, or in America, and were fully convinced of the necessity of maintaining the long-established and, as he believed, almost universal practice under which all Courts, Civil and Criminal, were empowered, on summary conviction, to punish contempts committed against themselves with fine and imprisonment, but they would appear to have felt that in framing a general law for this country—that was, a law which, by being made applicable alike to all Courts and all classes of persons, should maintain the principles and practice which he had mentioned—they must make the maximum amount of punishment comparatively light. If the Committee would permit him, he would read what was said by the learned Advocate General of Bengal in the paper to which he had already referred in support of the principles which had hitherto governed all legislation on the subject under discussion. Adverting to the power of summary conviction and punishment given to all Courts in the case of contempts committed against themselves, Mr. Ritchie said—

"Such a power is, according to the principles of English law, inherent to every Court of Record, whether the person guilty of the contempt be subject to its general jurisdiction or not; and to constitute a Court of Record, it is only necessary that the Court should be one having power to award imprisonment. These principles do not rest upon any technical rule peculiar to English law, but upon the necessity of arming all Courts of sufficient importance to have power of imprisonment entrusted to them with adequate powers to protect themselves against contempt and obstruction of their proceedings. And there seems to be no valid reason why they should not apply to the Courts of this country where no Regulation or Act prescribes a different course as to the Queen's Court at home."

He trusted he should be able presently to show that the views of the learned Advocate General of Bengal were in accordance with the views of many eminent Lawyers and Jurists in England. But he must first ask the attention of the Council to the Section of the Indian Penal Code which related to the offence of contempt of Court and provided a punishment for that offence. That Section, as the Code now stood, was Section 228, and a reference to it would at once show the Committee how greatly the framers of the Indian Penal Code differed from the framers of Act XXX of 1841, as to what should be regarded as a reasonable extent of fine and imprisonment

for contempt of Court. Section 228 of the Indian Penal Code fixed, as a maximum punishment, six months' simple imprisonment and a fine of 1,000 Rupees. As the Code was originally drawn, the imprisonment might be of either description, that was, either with or without labor. He apprehended that they were not now required to go into the question as to whether the framers of Act XXX of 1841, or the framers of the Indian Penal Code, were right. They were engaged in drawing up a Code of Procedure to carry out the provisions of the Indian Penal Code, and what they had to look to was, not any former law, but that Code, and to frame their Code in reference to its provisions. He had no hesitation in expressing his full conviction, that although the framers of the Indian Penal Code had, as he had shown, so greatly enlarged the punishment for the offence of contempt of Court, they never contemplated any consequent alteration in the jurisdiction now exercised by any Court over the offence, or imagined that the increase of punishment would interfere in any way with the power at present possessed by all Civil and Criminal Courts of summarily punishing, to the full extent allowed by any law for the time being in force, contempts committed against themselves, such power being declared by the learned Advocate General of Bengal to be inherent in all Courts and to be necessary for their protection. The framers of the Indian Penal Code knew perfectly well both the existing law and practice in respect to the trial and punishment of contempts of Court. They were well aware of the fact that under the existing law and practice the offence was invariably tried and punished by the Court against which it was committed, and that no other tribunal was competent to take cognizance of it; and had they thought that by reason of their having increased the maximum amount of punishment the existing practice should be altered, and that a new jurisdiction should, as it were, be created to try the offence when it seemed to call for a heavier punishment than the law now in operation prescribed, he felt assured that a remark or suggestion to that effect would have found a place in the full and able notes appended to the Code. But those notes contained no such remark or suggestion though the Code of Procedure to carry out the Penal Code, and how, as regarded certain points, that Code should be framed, was alluded to in them more than once. From this and other circumstances, he was led to infer that in so far as the trial of the offence was concerned, the framers of the Indian Penal Code did not consider that the increase in the punishment proposed by them would render any alteration in the existing practice necessary; but that, on the contrary, they intended that that practice should be maintained. The same inference would appear to have been drawn by the Royal Commissioners who prepared the Codes of Criminal and Civil Procedure. This, he thought, was clear from the manner in which they had framed the Chapters in both Codes relating to the offence in question and other offences of a similar character. The same circumstance showed also unmistakeably what their own views were on the general question which he was now discussing. He ventured to think that the remarks just made applied equally to the Honorable and learned Vice-President who introduced into this Council the Bills in which the Codes prepared by the Royal Commissioners were embodied; and here he wished to call pointed attention to the fact that two of the framers of the Penal Code, namely Mr. Macleod and Mr. Millett, were Members of the Commission appointed by Her Majesty to prepare the Codes of Civil and Criminal Procedure, the latter of which was intended to carry out the Penal Code. In a Code of Criminal Procedure prepared by Mr. Cameron and Mr. Daniel Eliott, who were for some time Members of the Law Commission, the following Sections relating to cases falling within Chapter X were to be found. [Mr. Harington here read the Sections which proposed that the Courts against which the offence was committed, should have power to award

the punishment authorized by the Penal Code.] These Sections to which his attention had been called by the Honorable Member for Bombay, though they apparently militated against his own views—and his obligations to the Honorable Member for pointing them out to him were therefore the greater—sufficiently indicated what were the views of Mr. Cameron and Mr. Eliott. The Royal Commissioners, concurring generally with Messrs. Cameron and Eliott, provided in Section 208 of the Civil Procedure Code, and in Section 108 of the Criminal Procedure Code, that when any such offence as was described in Clause 197 of the Indian Penal Code was committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate or of any Officer vested with the powers of a Magistrate acting as such in any stage of a judicial proceeding, it should be competent to such Judge, Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said Clause. In a foot note, it was stated "*the offence is that of insulting or interrupting a Court of Justice.*" Both Sections were followed by Sections limiting the powers of punishment of Principal Sudder Ameens and Moonsiffs on the Civil side, to the powers conferred on those Officers respectively, as Judges of Subordinate Criminal Courts, and of Magistrates and Subordinate Criminal Courts to their ordinary jurisdiction. In the case of the Principal Sudder Ameens, it should be remembered that the powers to which those Officers were thus restricted, extended to six months' imprisonment in the Criminal Jail with labor and fine up to 200 Rupees. The provisions of the English Codes were copied word for word into the Bills introduced into this Council; but though debates took place on the Motion for the second reading of both Bills, no objection was made to those provisions by the then Legal Members of the Council or by any other Member. In the first amendment prepared by him, he had not deviated from the principles which had been acted upon in framing the Codes of Civil and Criminal Procedure prepared in England, and the Bills embodying those Codes as they were introduced into this Council, though he was willing to limit even farther than the Royal Commissioners had done, the powers of punishment to be exercised by the Subordinate Courts, which he proposed should be restricted to what they were at present, and to allow the higher Courts alone—that was, the Courts superior to the Courts of the Principal Sudder Ameens—to award the more severe penalties provided by the Indian Penal Code, but this did not affect the principles involved. These he would leave untouched. He would ask, were those principles sound, and if so, should they not be maintained? The names signed to the Codes of Procedure which were prepared in England by a Royal Commission appointed for the purpose furnished, he thought, a conclusive answer in the affirmative to these questions. There they had the names of Sir John Romilly, Master or Keeper of the Rolls of the High Court of Chancery, of Sir John Jervis, Chief Justice of the Court of Common Pleas, of Sir Edward Ryan, for many years Chief Justice of Calcutta, of Charles Hay Cameron and Robert Lowe, Esquires, Barristers-at-law, and of three eminent Indian Civilians. To these names he might add the name of the Honorable and learned Vice-President. In the face of this array of legal authorities and names, he could not think that any Honorable Member would question the soundness of the principles upon which his first amendment was framed, and he ventured to hope that, on reflection, no Honorable Member would endeavor to disturb the long established practice which that amendment proposed to maintain. Supported by these authorities and names, he certainly thought he might fairly expect a unanimous vote in favor of his first and second amendments. Honorable Members would not fail to observe that the questions referred to in the early part of these remarks did not properly arise upon those amendments. Under them

there could be no imprisonment with labor or in a Criminal Jail. The Subordinate Courts, Civil and Criminal, were restricted to the powers of punishment for contempt of Court, which they now possessed, and which they had exercised in respect to all classes, Europeans and Natives, not only for very many years, but admittedly in such a manner as to afford cause of complaint to no one, and the imprisonment which might be awarded by the higher Courts was to be in the Civil Jail. This was what had been proposed by the Honorable and learned Vice-President in the discussion on Chapter X of the Code already referred to. A notice of amendment on his first amendment had been given; but he hoped that the Honorable Member for Bombay who had given that notice would not press his amendment. Independently of the serious complications which he foresaw must ensue if that amendment were adopted, it was open to an objection which he would thus illustrate. There was every reason to believe that in a very short time the Honorable and learned Vice-President would be Chief Judge of the High Court at Calcutta, and that the Honorable and learned Judge opposite (Sir Charles Jackson) would be a Judge of the same Court. He might be invited to take the post of Chief Judge of the High Court at Agra. He would suppose those learned Judges or either of them to be sitting in Court and to be grossly insulted by a disappointed suitor or to be interrupted by some outrageous conduct on the part of some one present in Court, or that a witness refused to be sworn before giving his evidence, or to produce a document, or to answer a particular question, or to sign his desposition. For any of these offences. the amendment of the Honorable Member for Bombay would permit the Honorable and learned Judges to fine the offender to the extent of 200 Rupees, and, in default of payment, to send him to Jail for a period not exceeding one month. To this extent of punishment the amendment was willing that the Honorable and learned Judges should be permitted to go, but this was the limit of the trust which it was thought could with safety or propriety be reposed in them. If the Honorable and learned Judges, having Sections 175, 178, 179, 180, and 228 of the Penal Code before them, considered that the person who had been guilty of any of the offences just mentioned, deserved a more severe punishment than the amendment allowed them to give; if they thought that the claims of justice would not be satisfied with that punishment, and that the offender should be punished perhaps to the extent of six months' imprisonment and a fine of 1,000 Rupees, or at any rate with some imprisonment or with some larger fine than 200 Rupees, the amendment would not entrust the Honorable and learned Judges with the power of awarding the higher penalty. They must send the offender to some Magistrate or Joint Magistrate who must hold a trial and take evidence. Perhaps it would be necessary for the Honorable and learned Judges themselves to appear as witnesses in the case. In cases of contempt their evidence might be the only evidence forthcoming to establish the fact which constituted the contempt, and it was a rule of law that the best evidence must be produced. The Magistrate or Joint Magistrate having completed the trial, might come to the conclusion that no contempt was proved, and that therefore the accused should be discharged, or that the contempt committed was not of a very aggravated character, and would be sufficiently punished with a small fine, or that the accused person had sufficiently excused his omission to do any of the things required of him, and should therefore be discharged, or that the case was not one calling for a more severe punishment than the Honorable and learned Judges might themselves have given in the exercise of the discretionary power proposed by the amendment to be confided to them. He (Mr. Harington) took leave to doubt, whether this would be a wise or judicious mode of dealing with such cases; he doubted whether such a proceeding, as he had described, was

calculated to support the dignity of the High Court, or to protect its Judges in the exercise of their functions. He did not think that this mode of dealing with such cases would satisfy the public.

MR. ERSKINE here interposed and observed that the Bill which they were considering applied only to Criminal Courts not established by Royal Charter.

MR. HARINGTON said, his remarks applied equally to the Judges of the Sudder Court which occupied the same position in the Mofussil which the Supreme Court did in Calcutta. It appeared to him that in the cases which he had put, the Honorable and learned Judges or the Judges of the Sudder Court could best decide, whether the offence had been committed, what was its character, and what was the proper punishment. He thought that the Honorable and learned Judges or the Sudder Judges would be better Judges on these points than any Magistrate or Joint Magistrate in the country, or than all the Magistrates and Joint Magistrates in the country put together. Entertaining this view, it seemed to him that the matter should be left entirely in the hands of the Judges, and that no other authority should be allowed to interfere. This was what was proposed in the first of his amendments.

In the discussion which had recently taken place on Chapter X, the Honorable and learned Vice-President had classed contempts of Court, or what the Royal Commissioners called the offence of insulting or interrupting a Court, with the offences defined in the other Sections of the Penal Code which were enumerated in his first amendment. He thought that this classification was quite right. Like contempt of Court, these offences were committed in the immediate presence of the Court; their conviction did not rest on extraneous evidence; they were committed directly against the Court which was in a position immediately to deal with the offender, and as the imprisonment was to be simple, that was, without labor, it could properly be undergone in the Civil Jail. He observed that the Honorable Member for Bombay proposed to follow the same classification in his amendments, but in framing those amendments, the Honorable Member seemed to have overlooked the existing law of his Presidency as regarded some of the offences to which he (Mr. Harington) was now referring. He must call the attention of the Honorable Member for Bombay to Sections 49 and 50 Regulation IV of 1827 of the Bombay Code, and ask him on what ground he proposed to deprive the Zillah Judges of his Presidency of the powers conferred upon them by those Sections? Was it that they had abused these powers and could no longer be entrusted with them? Had the Government of Bombay asked for this change? Did it think that the Zillah Judges of the Bombay Presidency should no longer be permitted to possess these powers? Might he be allowed to put the same questions to the Honorable Member of the Government on his left (Sir Bartle Frere)? He would read the Sections to which he was referring. [Mr. Harington here read the Sections which allowed the Zillah Judges to punish the offences mentioned therein with a fine of 500 Rupees commutable, if not paid, to three months' imprisonment.] It would thus be seen that for more than thirty years the Zillah Judges of the Bombay Presidency had been empowered to punish two of the offences under consideration with fines of more than double the amount, and with imprisonment for treble the time mentioned in the first of the amendments prepared by the Honorable Member for Bombay, and to which it was proposed to restrict the Judges of the High or Sudder Court and the Zillah Judges throughout the country. Was not this, he would ask, retrogressive legislation? In settling questions such as those they were now discussing, it appeared to him that, if there was one thing more than another which they ought carefully to avoid, it was retrogression. He made this remark, in connection with these questions, in the interest of the European no less than

of the native community. He had said before, and he repeated, that he would not deprive our European British subjects in India of a single privilege which they now possessed in connection with the administration of Criminal justice. Good policy no less than justice to our European British subjects seemed alike to require the retention of those privileges, until their place could be supplied by what should satisfy all reasonable men. He believed that the natives generally did not begrudge the enjoyment of these privileges by their European fellow countrymen. But looking at the question entirely from a European point of view, he thought it most unwise, inexpedient, and injudicious to attempt to extend a system which had been severely condemned and which it was generally felt by all moderate men, must soon be greatly modified, in the manner proposed in the first of the amendments of which the Honorable Member for Bombay had given notice. If that amendment were carried, he felt assured that it would only precipitate matters and hasten on what all reflecting men, all men who looked forward, must see was looming in the distance, without producing intermediately benefit to any one. In the Petition presented and read to the Council on Saturday last, the Petitioners said—

"Your Petitioners however would humbly submit that the frequent attempts which have been made of late to subject Europeans to the Mofussil Criminal Courts and native Magistrates, and the support which such a proposal invariably receives whenever it is brought forward in your Honorable Council, are calculated seriously to discourage the settlement of Englishmen in the interior, and to awaken in their minds grave distrust and suspicion of the policy of Government."

If the Petitioners would compare the Code of Criminal Procedure as prepared in England and as read a first and second time in this Council with the Code as it left the hands of the Select Committee, they would see that, in so far as this Code was concerned, there was no ground whatever for the charge which they had brought against the Council in the paragraph of their Petition which he had read, and he was in a position to tell the Petitioners that the change which had been made by the Select Committee in the part of the Code to which he was referring, was the result not of any pressure from without, but of the honest convictions of the Members of the Select Committee, which he believed were shared in by a large majority of the officers of Government throughout the country. He begged to apologize to the Committee for having occupied so much of their time. He should have been content to have moved his amendments without any remarks; but the Honorable Member for Bombay had given notice of amendments on his amendments, and it seemed therefore right and proper and respectful to the Committee that he (Mr. Harington) should explain thus fully the grounds of his amendments and the principles on which he had framed them.

He had now the honor to move that the following amendments be adopted :—

"When any such offence as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in any Court, Civil or Criminal, it shall be competent to such Court to cause the offender to be detained in custody, and at the rising of the Court to take cognizance of the offence, and the offender shall be liable to punishment as authorized by the said Sections. In any such case in which a Court subordinate to the Chief Civil Court of original jurisdiction in the District, or in which any Magistrate exercising powers less than those of a Magistrate, shall consider that the offender should be imprisoned, or that a fine of larger amount than 200 Rupees should be imposed upon him, such Court or Magistrate shall not pass sentence, but shall record the facts constituting the contempt with any statement the offender may make and the finding thereupon, and shall refer the case to the Court or Magistrate to which such Court or Magistrate is subordinate. The Court or Magistrate to which the case is referred shall pass such sentence or order as to such Court or Magistrate shall seem proper and which shall be according to law. When a case is referred under this Section, the offender shall be detained in custody until the decision of the Superior Court is made known, or may be admitted to bail if sufficient bail be tendered for his appearance when required. The imprisonment adjudged under this Section shall be in the Civil Jail.

When a person has been sentenced to punishment, or whose case has been referred, under the last preceding Section, for refusing or omitting to do any thing which he was required to do, it shall be competent to the Court to remit the punishment, or in case of reference to discharge the offender on the submission of the offender to the order or requisition of such Court.

When any such offence as is described in Chapter X of the Indian Penal Code, except Sections 175, 178, 179, and 180, is committed in comtempt of the lawful authority of any Court, Civil or Criminal, by a European British subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence which are vested by the Statute 53, George III. c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender on conviction in the same manner as is provided in that behalf in the said Statute. If such Magistrate shall consider the offence to require a more severe punishment than he is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature. If the Judge or Magistrate of the Court against which the offence is committed is not a Justice of the Peace, he shall send the offender to a Justice of the Peace to be dealt with under this Section."

The question was then proposed by the Chairman, that the first two of the above Sections be substituted for the first part of Chapter X.

MR. ERSKINE said that, he thought the Council must feel much indebted to the Honorable Member who had just spoken, for the clearness and the great fulness with which he had brought this whole subject once more under consideration. For his own part, and notwithstanding the unfavorable opinion expressed by the Honorable Member of an amendment which he (Mr. Erskine) had circulated, he must offer his acknowledgments to that Honorable gentleman, not merely for the interesting information which he had brought forward, but because it seemed to him that most of the conclusions to which he had been led, and which he had embodied in his Motion, were sound and satisfactory. Indeed, there was in the amendment proposed by the Honorable Member so much that had his (Mr. Erskine's) entire concurrence, that it was with much reluctance he found himself compelled to admit that, in respect to one important point, he could not go along with him. He quite concurred with the Honorable Member when he proposed that a marked distinction should be drawn between contempts committed in the immediate presence of a Court, and those committed against its authority constructively elsewhere, through its subordinate agents and processes; also when he proposed that the latter class of cases should be delegated entirely to the ordinary criminal tribunals and modes of procedure; also when he proposed that the different Courts, in dealing with the former class of cases, should have power, and should be under an obligation, to detain the alleged offender until the rising of the Court, in order that the enquiry might be conducted with due formality and deliberation; and when he proposed that a duty should be laid upon every Court to record distinctly the acts constituting the contempt, the explanations offered by the accused person, and the finding of the Court, in the form of a written proceeding; and when he proposed that the Court should have power, on the offender making submission to the Court, to order his discharge at once; and, finally, when he proposed that, in cases of contempt committed in open Court, every Court should hereafter, as heretofore, have power to punish the offender by fine not exceeding 200 Rupees. The only point, therefore, on which at present there was a difference of opinion between the Honorable Member for the North-Western Provinces and himself, was as to the manner in which a contempt committed in Court should be treated when the presiding officer might be of opinion that it would not be adequately punished by a fine of 200 Rupees. Or perhaps it would be more correct to say that, practically, the difference between them amounted only to that which he had just stated; although, when they came to consider the principles in accordance with which rules of procedure for punishing such contempts generally ought to be framed, it was apparent that their views were irreconcilably opposed. The opinion for which the Honorable

Member contended was that, contempts committed in Court should be punished by the Court against which they were committed, whenever that could be so arranged. The opinion which he (Mr. Erskine) felt himself obliged to maintain was that no such contempt should ever be punished by the Court against which the offence was committed, if that could be avoided without public inconvenience and evil consequences. He thought that no class of Courts should have any penal powers of this kind which were not proved to be indispensable for the protection of their proper authority. In support of the view that it is desirable to accord larger powers to Courts of Justice in cases of this kind, the Honorable Member for the North-Western Provinces had referred to various authorities, whose views, no doubt, were entitled to every consideration. No one there present, for instance, would be likely to regard without due respect the precedents of English Courts and the authority of English law which the Honorable Member had invoked. He might also have alluded to the useful and valuable New York Code, which on this point leant in a great measure in the same direction. In like manner it would be very ungrateful in Honorable Members of that Council not to feel a high regard for any proposals emanating from the able and learned Commissioners whose names had been mentioned by the Honorable Member, and who had framed in London the Criminal Procedure Code which was the ground-work of this Bill. Still he (Mr. Erskine) thought it was not an unbecoming or an unfair remark to make that all these authorities must have been largely affected—they could hardly say how largely—by the influence of the English system; while that portion of the English law which related to contempts, was confessedly—to use a guarded expression—not one of the strong points in the system. Indeed, whatever might be thought of the English practice in these days, there could be no doubt that the state of the English law as to contemp s had often been severely criticised by very competent judges. It was a common observation, moreover, and he hoped he might refer to it without offence, that even great lawyers were very apt, from the force of habit and of circumstances, to acquiesce in many points of practice with which they had been familiar from their youth, without curiously enquiring into the first principles on which those practices rested, unless some very special occasion should arise for such enquiries. As, therefore, the question now before the Council really was an important, and at the same time a simple question of principle, he (Mr. Erskine) trusted that Honorable Members would agree with him that the appeal must be, in the first instance, to the impartial reason of each individual legislator, to his common sense, and sense of justice; and only in the second instance, to traditions and precedents of law, and to legal authorities however worthy of respect. The Honorable Mover of this amendment had next endeavoured to show that the views which he advocated were in accordance with those of the framers of the Penal Code. Now he (Mr. Erskine) had striven to obtain direct evidence of the exact intentions of the framers of that Code in this respect, but he had not been successful. He was not therefore prepared to offer a confident opinion as to what their opinions really might have been. He would not venture to assert that they had been opposed to those of the Honorable Member. But he hoped he might express his opinion that the Honorable Member had not succeeded in demonstrating that they must have been in accordance with his own. There were even some considerations which led him (Mr. Erskine) to doubt whether it could have been so. For instance, the Honorable Member had referred to the provisions of Act XXX of 1841 as strongly corroborative of his argument; but to him (Mr. Erskine) they seemed rather to tell the other way. The original Penal Code had been laid before the Supreme Government only in 1837, and by that Code sundry kinds of contempts were made punishable with much severity as criminal offences. Nevertheless,

when a law was passed only four years afterwards to give to all Courts summary powers for the punishment of contempts committed before them, the powers entrusted to those Courts generally did not extend beyond a fine of 200 Rupees. This seemed to indicate a two-fold conviction on the part of the Legislature; both, that such offences must sometimes be very severely punished; and that the power to inflict such severe punishments need not be entrusted to all Courts generally, but might in those, as in other cases, be left to the ordinary Criminal Tribunals. Again, even in the recommendations of Mr. Cameron and Mr. Eliott, of which mention had been made, there was somewhat that did not accord with the proposals of the Honorable Member. For while they proposed to entrust to the lower grades of Civil Courts only a limited power to punish for ordinary contempts, they made no special provision in connection with more serious cases for a reference by such Courts, when their own powers were exhausted, to the Superior Civil Courts, as the Honorable Member proposed to do; but they provided on the contrary that the reference in such cases should be to the ordinary Criminal Tribunals. Then, if any one referred to the Chapter on contempts in the Penal Code itself, as originally drawn, he would observe that its provisions were anything but inconsistent with the scheme of procedure which he (Mr. Erskine) would prefer. The Honorable Member for the North-Western Provinces had himself alluded to the increased severity of the punishments for contempts in the Penal Code; and he (Mr. Erskine) trusted that, in dealing with this question, no Honorable Member would forget how great a change that Code had introduced. Every contempt of Court, whether committed against a superior or a subordinate Court, and whether committed in presence of the Court or not, was made punishable by that Code—in the shape in which it was first presented to Government—as a regular criminal offence, with what the French Codes styled an infamous punishment, namely, imprisonment with hard labor. He did not affirm that this of itself was a conclusive proof that the framers of the Code had not intended that all Courts should take cognizance of such contempts. But, perhaps, it gave more support to that opinion than to any other. And, at all events, the determination to declare that all contempts were to be regarded as regular criminal offences, and were to be punishable as such, was quite in accordance with the views of the most distinguished advocate of the opinions for which he (Mr. Erskine) was contending; and would make it easier to give full practical effect to those views than it ever had been before. Neither should it be forgotten, that the distinguished person to whom he had just referred, Mr. Livingston, was one for whose judgment the framers of the Penal Code had expressed the greatest respect, and to whose labors, as they acknowledged, they were under no ordinary obligations. In the Report with which they originally submitted their Code to the Supreme Government, after referring to the valuable aid they had received from the French Codes, they observed—

> "We have derived assistance still more valuable from the Code of Louisiana prepared by the late Mr. Livingston. We are the more desirous to acknowledge our obligations to that eminent jurist because we have found ourselves under the necessity of combating his opinions on some important questions."

Now, the Honorable Member, he was sure, would admit that the present question was an important question. It was one in respect to which the Law Commissioners in their proposed penal legislation were departing from the practice which had formerly prevailed in India. It was one in respect to which Mr. Livingston had introduced a somewhat novel procedure, which he had defended with great ability and even vehemence. And yet the Law Commissioners, in their note on this Chapter, had not expressed dissent from Mr. Livingston's views, although on other occasions their dissents had been clearly expressed and justified. It might not be legitimate

—indeed it would not be legitimate—from this alone, to infer that they had adopted his views. But, at least, it could not be doubted that they must have given their attention to them, and that while they had expressed no disapproval of them, their Code was so drawn as readily to adapt itself to the requirements of his scheme. What, then, were the views of Mr. Livingston? In the Code of Crimes and Punishments prepared by him was a Chapter which referred to Offences against the Judiciary power, committed in a Court of Justice. That Chapter contained only four Sections. The 1st Section provided for obstructions by noise, and refusals to obey orders for the maintenance of decorum in Court. Misconduct of that kind was to be met in the first instance by removal; but, if persisted in, was declared to be a criminal offence, and was to be treated as a misdemeanor. The next Section related to intentional insults to the Court; and the provision in that Section was—

"The fact of the intent with which the words were used, and also whether they were indecorous, contemptuous, and insulting, shall be decided by the Jury."

Then followed a Section relating to obstructions by violence and their punishment; and the Chapter concluded with the following short Section:—

"Courts of Justice have no power to inflict any punishment for offences committed against their authority other than those specially provided for by this Code and the Code of Procedure. All proceedings for offences heretofore denominated contempts are abolished. All offences created by this Chapter shall be tried, on indictment or information, in the usual form."

Those were the provisions of Mr. Livingston's Penal Code; and in the introduction to that Code, he defended those provisions at some length, and with great ability. His argument was too long to be read to the Council in detail; but he hoped they would allow him to read the concluding paragraphs of it, in which the substance of the whole was summed up with much force and clearness. After passing severe strictures on some expositions of the English Law relative to contempts of a certain kind; and referring to the admission of so Conservative a writer as Blackstone, that—

"it is not agreeable to the genius of the Common Law in any other instance,"

Mr. Livingston went on to remark—

"An infringement of the legal rights of a Court of Justice is an offence, and that Government is radically defective which places the power to punish it in the hands of the offended party. Here, then, we find the limit of that necessity which is so much insisted on, and so little understood. There is a necessity that Courts should have the power of removing interruptions to their proceedings, because, unless they can perform their functions, they cannot exist; but there is none that they should have the power to punish those interruptions. The laws must do that, by the instrumentality of the Courts, but in the form prescribed by law."

And then a summary of the whole argument was given in these striking and forcible words:—

"If the argument has been as clearly expressed as its force is felt, it must be convincing to show, that all those offences, distinguished by the name of contempts, ought to be banished from our Penal Law, which they disfigure by the grossest departure from principle; that Courts ought to be empowered to remove all obstructions to their proceedings; that all such acts, as well as those tending to interrupt the course of judicial proceedings, to taint its purity, or even to bring it into disrepute, should be punished only by the due course of law; and that proper punishments, inflicted by the regular operation of law, will deter from these acts much more effectually than the irregular agency of the offended party, who sometimes, from delicacy, will abstain from enforcing the penalty of the law—sometimes, from the indulgence of passions, will exceed it.

It is on these principles that this part of the Code has been framed. It vests ample powers of repression in the Court. They may remove every interruption to their proceedings; they may enforce prompt obedience to their orders; they may, if simple removal is not found sufficient, restrain by imprisonment; and after this a regular trial and punishment follows for the offence. Here is no angry altercation. All is done with the composure necessary to the dignity of justice. The Judge is not the accuser; the accuser is not the Judge. All that class of offences, too, which

consist in insulting expressions, are provided for. But here again, an impartial Jury decide, as well on the nature of the words, as on the intent with which they were used. The Judge cannot improperly indulge his feelings, or restrain them, to the injury of public justice; and the offender against laws for preserving the order and dignity of the Judiciary is liable to the same penalties, entitled to the same rights, and judged by the same laws, that apply to other offenders."

He (Mr. Erskine) was sure that he could not add anything to that clear and convincing argument. These surely were words of truth and soberness; and, the more he had reflected upon them, the more had he become convinced of the wisdom and justice of the principle they maintained. But it might be said that, if these views were carried to their fullest extent, they would deprive the Court of power to punish, even by fine, contempts committed against themselves in their own presence. And no doubt that would be the effect of an attempt to push the principle to its utmost limits at all hazards. But even the soundest principles could not in practice be pushed to extremes without regard to seasons and circumstances. All that could be affirmed was that the deviations from them should be as slight as possible. In a more advanced state of society, and with a better organization of Courts, it might, perhaps, with advantage be ruled unconditionally that no Court should inflict any punishment at all for an offence against itself. But any attempt to deprive the Courts in this country at this time of the power of disposing at once of petty cases of contempt, would result practically in the creation of an intolerable nuisance. It would be an insufferable hardship not only to witnesses and others, but even to the offenders themselves, to enact that every such case must be sent to a different and generally to a distant Court before the most trivial fine could be inflicted. The result in practice would be that petty contempts would go unpunished altogether. Some discretion therefore must be allowed to the Court, but it was an object not unnecessarily to enlarge that discretion. The object was to ascertain how far the sound general principle might be applied in its integrity, and how far it must be allowed to give way to existing exigencies and the public convenience. The question in fact resolved itself into a question of degree. How much must be conceded to circumstances? and how far might they be controlled? It was not easy to settle this question with anything like accuracy; and he (Mr. Erskine) had thought it best therefore to allow it, as it were, to settle itself. A moderate power of punishing by fines had been confided to every Court in this country for twenty years past; and as it did not appear to have been alleged on the one hand that this power was generally insufficient, or on the other hand that it had been seriously abused, he saw no reason for proposing any alteration in respect to it. He was not prepared with any special arguments in favor of the exact amount of fine which the Courts would thus be authorised to impose; nor would he argue that a few rupees more or less would make any considerable difference. But, in the absence of any decided objection to the usage which had so long obtained, he proposed to allow it to remain unaltered. And in judging of this proposal to continue to all Courts a power of inflicting fines, without conceding to them any other punitive powers, the Council would of course bear in mind that of all powers that of fining was least likely to be dangerously abused. This was a most important consideration; because the power was to be entrusted not only to the superior Courts of Justice, but to all the subordinate Courts scattered everywhere over the country. In that respect the distinction between the infliction of a fine and any other punishment was very marked. It was impossible to carry out even the most lenient sentence of imprisonment without subjecting the offender, if not to degradation, at all events to very great indignity; for which, even if it were found on appeal that the sentence was unjustifiable, no adequate reparation could be made. On the other hand,

when a simple fine only was inflicted, in nine cases out of ten no indignity was suffered, while there was always the means of obtaining complete reparation, and of attending in person to plead for it; so that in fact there was little or no likelihood of serious abuses occurring in such cases. Moreover, the practice of punishing contempts in a summary way by fine was familiar to those who attended the Courts all over India. These were some of the considerations to meet which he had framed his amendment; and he would only say again—as regarded the extent of the power of fining which he proposed to grant—that he was not particularly anxious that any one amount should be specified rather than another, provided the limit were fixed as low as seemed to be feasible. The Honorable Member for the North-Western Provinces seemed to think that there was some inconsistency or impropriety in his (Mr. Erskine's) proposing that no Court should have power to inflict a heavier fine than 200 Rupees for a contempt against itself, when some of the Civil Courts in the Bombay Presidency had long been empowered in such cases to inflict fines of 500 Rupees. But the Honorable Member, when he argued in that way, must have forgotten that the very principle for which he (Mr. Erskine) had been contending, was this; that no Court—when that could safely be avoided—should be allowed to punish at all for offences against itself; or should in any circumstances have larger powers of punishment than were absolutely necessary. There could hardly be any inconsistency in his wish to carry out those views in his own Presidency as well as in other places. If that could not be fully effected without restricting some peculiar powers of certain Courts in Bombay, he would still remind the Council that the very object of the present Code was to introduce uniformity of powers and of practice in the different Presidencies, and that that object could only be effected by mutual compromises. It had not apparently been found elsewhere that the absence of power to fine summarily to a higher extent than 200 Rupees operated injuriously on the Zillah Courts, and he saw no reason therefore to apprehend that it would do so in Bombay. He might just add that the two Sections of the Bombay Code to which the Honorable Member for the North-Western Provinces had referred would be repealed, by Act X of 1861, from the 1st of January next. The Honorable Member had gone on to argue that the Judge of the Court against which a contempt was committed would often be the best or only witness in the case, and that much public inconvenience would be caused if Judges who believed that their authority had been contemned were forced to appear to give evidence on the subject in a Criminal Court. Now there was an old saying, *error latet in generalibus;* and instead, therefore, of meeting this objection by any general arguments, he would ask the Council to consider separately each of the Sections to which it applied. Of the five Sections in connection with which only the Honorable Member proposed that the Courts should have general powers of punishment, three Sections, 178, 179, and 180, related to refusals to obey some order of the Court—as, to take an oath, to answer a question, or to sign a statement. Now what would be the procedure in the event of an offence being committed under any of these three Sections? It would not, of course, be the first object of the Judge to clench the case against the recusant. His main object would be to induce him to conform to the order of the Court. He would in the first instance exhort him to do this. Should the person still refuse, the Judge would, no doubt, explain to him the consequences to which he would expose himself by a persistent contumacious refusal to submit himself to the orders of the Court, and would at the same time require such number of creditable persons as he might deem necessary to attend and witness the conduct of the offending party. And surely if any one, under those circumstances, still pertinaciously contemned the authority of a Court of Justice in public and in the pre-

sence of witnesses, it could hardly be possible that any difficulty should arise as to the evidence. In like manner, with regard to Section 175, which related to an intentional refusal to deliver a document in Court, he (Mr. Erskine) would not say that offences of that kind would never be committed in open Court, but he thought that if a person, having a document in his possession in Court, then and there refused to deliver it, there would be no more difficulty in respect to the proof than in cases under the three Sections above referred to; whereas if the offence, as was more probable, consisted in omitting unjustifiably to bring a document for delivery in Court, the evidence as to the intention of the omission would rarely be that of the Judge or of any one who could speak only to what had occurred in Court. Then there remained only cases under Section 228, that is to say, insults to the Judge himself; and in that connection he (Mr. Erskine) could only refer once more to the passages he had already read, and to the principles he was advocating, to show how desirable in his opinion it generally was, in cases of this nature, that the officer who believed himself to have been insulted should not be personally instrumental in procuring the conviction of the offender. Indeed less evil would result, he thought, even from occasional failures of justice, than from a practice which would allow any Judge to pronounce, not only whether an insult to him had been intended, but what was the measure of it, and what ought to be the punishment. Many of these remarks, he thought, were applicable likewise to what the Honorable Member had said about the indignity to which a Superior Judge would be put if he were obliged to refer a case of contempt, committed in his own presence, to another and inferior Court for adjudication; especially as the inferior Court might take a different view of the circumstances and discharge the alleged offender. But he (Mr. Erskine) could hardly conceive that there would be any thing derogatory to the dignity of the highest and most respected Judge in the country in transmitting to the ordinary Criminal Tribunals for punishment a person who had committed a criminal offence against himself. Surely, on the contrary, that would be a more dignified proceeding than for the Judge at once, of his own act, to convict such a person of a serious offence and sentence him to a heavy punishment. As to the supposition that an offender, if referred to a different Court, might sometimes be acquitted in opposition to the opinion of the Judge who remitted him for trial, he (Mr. Erskine) would observe that cases of contempt were not to be cognizable by any Magistrate inferior to a subordinate Magistrate of the first class: and that officers exercising those powers were men of character and experience. He could not suppose that such officers—in cases too with which they had no personal concern—would be at all apt to allow their judgments to be influenced by any thing but their sincere conviction of what was just and right. If therefore in any such case the judgment of the Magistrate should vary from that of the Judge who complained that he had been insulted, there would be some reason to doubt whether the latter officer might not have judged inconsiderately. For, certainly, if it could be supposed that the mind of a subordinate Magistrate in dealing with a case of contempt against a superior Court might lean unduly to one side rather than the other, it would be to the side of the high Magistrate alleged to have been publicly contemned. If one motive were likely to be stronger with him than another, it would be the desire to vindicate the dignity and authority of the Judicial system with which he was himself connected, and the honor of which he would be solicitous to uphold. And as to the remark that his (Mr. Erskine's) proposals indicated distrust of the Judges generally—he must allude to it because the Honorable Member had made a similar remark on a former occasion—he (Mr. Erskine) could only say that assuredly he felt no special distrust of Judges in this country as such; but that if by

distrust the Honorable Member merely meant a belief that Judges, like other men, were liable to the frailties and infirmities incident to humanity, he (Mr. Erskine) must admit that he so regarded them; and that he did not therefore see reason to dispense, in the class of cases now referred to, with the checks and safeguards against human weakness which were found necessary in all criminal procedure, and were the cause of it. It was Dr. Arnold, he thought, who used to say that unlimited powers could be trusted with safety only to unlimited perfection. And Mr. Livingston himself seemed to have answered this objection of the Honorable Member by anticipation. He wrote in one place—

"It is a trite and therefore probably a true observation that men forgive injuries much sooner than insults. Judges—although by vesting them with this power we treat them as angels—are really men."

And again:

"From the nature of this crime its existence must depend on the temper of the Judge who happens to preside. Words which a man of a cool and considerate disposition would pass over without notice, might trouble the serenity of another more susceptible in his feeling or irritable by his nature. There is no measure for the offence, but the ever variable one of the human mind."

These, then, were the conclusions which he (Mr. Erskine) drew from the considerations to which he had just alluded. It appeared to him that the true principle on which cases of contempt should be dealt with was opposed to that advocated by the Honorable Member, and was this—that no Court as a general rule should take cognizance of such offences when committed against itself. In practice, however, it was indispensable, at least in these times and in this country, that certain limited powers of summary punishment should be confided to all Courts. But those powers should be as limited as possible; and should not be extended without the strongest reasons. There was nothing in the experience of past years to warrant the belief that the summary powers hitherto entrusted to the different Courts for their own protection had been insufficient. Occasionally, no doubt, cases had occurred and would occur in which a mere fine would be no adequate punishment. Those were the exceptional cases to meet which severer penalties had been enacted by the Penal Code. But it was not the occurrence here and there, or now and then, of a few isolated and exceptional cases of unusual gravity which would warrant the grant of large penal powers to other than the ordinary Criminal Courts. In order to justify that course, it must be shown that large summary powers would often and urgently be needed; and that they were not likely to be abused. He did not think that any such urgent necessity had been proved; and he was therefore averse to any extension of those powers. These were the considerations that had induced him to prepare the amendments which he had caused to be printed and circulated to Honorable Members, and which he had now the honor to move.

The question was then proposed by the Chairman that the following Sections proposed by Mr. Erskine be substituted for the first two Sections proposed by Mr. Harington:—

"When any such offence as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the immediate view and presence of any Court, Civil or Criminal, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at the rising of the Court on the same day to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding 200 Rupees, or, if such fine be not sooner paid, by imprisonment in the Civil Jail for a period not exceeding one month. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding 200 Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of

the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or if sufficient bail be not tendered shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and if necessary commit the accused person for trial before a Supreme Court of Judicature. In no case tried under this Section shall any Magistrate adjudge imprisonment, or a fine exceeding 200 Rupees, for any contempt committed in his own presence against his own Court.

When any person has been sentenced to punishment, or forwarded to a Magistrate or Justice of the Peace for trial, under the last preceding Section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment on the submission of the offender to the order or requisition of such Court."

MR. SETON-KARR said that, on the last occasion when this subject was before the Council, the discussion came on so late in the day, and the field was so fully occupied by other Members who were possessed of so much more ample information on the subject, that he had left it entirely to them. Now, having looked carefully into the question, and having referred to the Penal Code, he should wish to add a few words explanatory of the reasons for the vote which he should give. It had been proved by experience that cases in which a greater fine was requisite than 200 Rupees, were rare, and what had been the experience of the past naturally justified him in anticipating the future. The only such cases which he could recall at present as having made a great stir, were, first, a case in the recollection of the Honorable and learned Judge on his right, which occurred some years since in the Courts of Purneah, and next a case which had come to his own knowledge, where a European gentleman had complained of a Moonsiff and the Moonsiff in his turn complained of the European. He apprehended that suitors, especially Europeans, would not habitually use defiant or menacing gestures or language in Court, but would exhibit a reasonable submission to the orders and requisitions of the presiding authorities; that, when offences of the nature contemplated did occur, they would be sufficiently met by moderate fines; and that such fines, whenever imposed, would be promptly paid. But still there might even now and then be cases of gross and intentional insult, for which a heavier amount of punishment would be necessary; and it was to meet these that the framers of the Civil Code had found it expedient to allow of larger fines and longer periods of imprisonment. This, in fact, was a point which had scarcely seemed to him to have been met by the Honorable Member for Bombay, and it was not possible to understand the intention of the framers of the Code, unless on the supposition that they thought the old law insufficient. He admitted that the old law had, on the whole, worked well for twenty years, and the opinion of the Advocate General was that the limit prescribed by this law should be the limit in those Provinces to which the law did not extend. But another question here arose, and that was, whether, as the Penal Code had sanctioned these increased powers, it would be fair to the Sudder Courts or to Zillah Courts to require their presiding Officers to send cases which seemed to call for a heavier punishment than a fine of 200 Rupees, to Subordinate Magistrates for trial. Such Magistrates might be hasty or inexperienced, or might have been recently at issue with the Judge or Appellate Court, and they might throw doubts on the very best evidence. In short, it would hardly be consistent with the position and dignity of the chief Civil or Magisterial Courts to send such cases to Lower Courts for trial. As to the justice of the thing, there were appeals from the orders of the Civil Courts and of the Magistrates in such cases, so that there were safeguards against abuse. Looking, then, to the views which had been so ably and lucidly

expounded by the Honorable Members no his left and right respectively,' and to the necessity for arming the Higher Courts of the country with power promptly to assert and vindicate their own dignity, he should on the whole support the amendment of the Honorable Member for the North-Western Provinces in preference to that of the Honorable Member for Bombay.

SIR CHARLES JACKSON said, he would support the amendment of the Honorable Member for Bombay, but in so doing he would not follow him in either finding fault with the English law or in his unlimited admiration for Livingston. He would support the amendment, not for the reasons given by that Honorable Member, which went the whole length of adopting the views of Bentham, but because it appeared to him to strike out a middle course between those extreme views and the proposition of the Honorable Member for the North-Western Provinces. Now, what was the English practice ? If a contempt were committed in open Court, the Judge might fine the offender, or, as was usually the case, he would commit him to prison until he apologized. There was no severity or hardship in that. He thought that the English law was a very just and proper one. Surely, it was quite necessary for the decency of public proceedings in Court that the Judge should have the power of putting an immediate stop to any contempts committed in his presence. For instance, if a man were to make an insulting gesture before the Court, the Judge ought to have the power of punishing him for it on the spot. In fact, the knowledge that the Judge had the power of immediately putting a stop to any irregularity had, no doubt, a most beneficial effect in preserving silence and order in Courts of Justice. He, therefore, thought that the moderate power exercised by English Courts of Justice to punish for their own contempts was a very proper power. On the other hand, he must look at the question with reference to the new Penal Code which introduced a number of heavy punishments for contempts of Court. Now, however calm and temperate a Judge might be, he was still but a man and liable to be biassed in his own case. He, therefore, thought that some restriction should be put on the power of a Judge to punish for contempts committed against himself. He admitted that the strict principle militated against giving any such power, and the reason was that a Judge should not be the judge in his own case. But, as had been ably shown by the Honorable Member for Bombay, principle must sometimes yield to expediency, and his amendment therefore provided a moderate punishment to be inflicted by the Court itself. But the question was, should the Council give the large powers proposed by the Honorable Member for the North-Western Provinces to the insulted Judge ? Section 182, and some of the other Sections of the Penal Code, gave six months' imprisonment with hard labor and 1000 Rupees' fine. He (Sir Charles Jackson) thought that every man liable to so severe a punishment had a right to claim to be put on his trial for any one of those offences. He should on these grounds support the amendment of the Honorable Member for Bombay.

THE CHAIRMAN said, the question between the two amendments proposed resolved itself into this, whether a Court should have power to punish as for a crime a contempt committed in the face of the Court, that is, a contempt committed against itself. Then the next question was, were the punishments which the Honorable Member for Bombay proposed to allow the Court to inflict in its own defence sufficient, or was it necessary that the Court should have the power of inflicting the punishments which were imposed by some of the Clauses of the Penal Code ? The Honorable Member for Bengal had stated that he did not understand why the punishments for contempts of Court had been increased. The reason was this. There were many cases in which a person ought to be punished with a higher punishment than a fine of 200 Rupees, or imprisonment for one month in default of payment. A

witness might refuse altogether to give evidence. That would be a case far beyond a contempt of Court. It would defeat public justice if a witness could refuse to answer any question for 200 Rupees. As such, the offence ought to be punishable more severely than a contempt of Court. So far as concerned the Judge himself, it was a contempt for which a small punishment would be sufficient; but so far as it was a violation of public justice, it ought to be treated as a crime and dealt with by the ordinary Courts of Justice. He had read this morning of a case which lately occurred in England of a young man who had charged his father with an attempt to murder him, and who, when brought before a Magistrate, refused to give any evidence at all. In a case of that kind, public justice might be entirely frustrated, and a person who persisted in his refusal to give evidence, ought to be punished to the full extent provided by the Penal Code. His being sent to Jail until he obeyed the order of the Court was simply a punishment for contempt of Court, but his continued refusal ought to be treated as an offence against public justice; and whether the offence had been committed against the lowest or highest Court, he ought to be indicted and punished under the Penal Code. When Chapter X was last settled, he did not understand that it was intended to give Civil Courts the power of acting criminally; but when the Honorable Member for Bombay brought forward his amendment referring the appeal to the Civil Court, it had occurred to him (the Chairman) that the Courts so trying, might be considered Civil Courts, and he had therefore proposed his amendment to remove any doubt. He never understood at that time that Act XXXI of 1841 was repealed or intended to be repealed, but thought that it would continue in force; but on hearing that it was to be repealed, he had said, as Honorable Members would remember, that, if the Honorable Member for the North-Western Provinces or any other Honorable Member would propose any specific punishment for contempt, he (the Chairman) was quite ready and willing to consider the question. And he now repeated that, if the Act of 1841 was to be repealed, he was quite willing to give all Courts, whether Civil or Criminal, the power of punishing for contempts committed in the face of the Court to the extent provided by that Act. But if the offence was to be punished with the higher punishments prescribed by the Penal Code, the offender ought to be tried as in ordinary Criminal trials, namely, before a Judge and Jury.

MR. HARINGTON said that there would be no trial by Jury in the cases with which they were now dealing. Such cases would go before a Magistrate.

THE CHAIRMAN resumed. When he spoke of a Jury, he was alluding to the Supreme Court where all offences were tried by Jury. He was not speaking of the Procedure in the Mofussil Courts, where some offences were tried without a Jury. Whether that was right or not, was not what we were now considering. That point had already been determined in another part of the Code; and if the Procedure in question was wrong, it was wrong as regards all offences and not as regards these particular offences. What he now meant to say, however, was that the extent of punishment which had hitherto been in force, and which was proposed to be continued by the amendment of the Honorable Member for Bombay, was amply sufficient for summary punishment of contempts committed in the face of a Court; but that in all grosser cases under the Penal Code, and for all cases that were not adapted to summary procedure, the offender ought to be tried by the ordinary Criminal Courts of the country, and punished accordingly. That was the distinction which he drew, and it was quite in accordance with the course pointed out by the Honorable Member for Bombay, and with the opinion which he had read of Mr. Livingston. He (the

Chairman) thought that there might be great difficulty in stating what a contempt was. In the Superior Courts he believed it was competent for a Judge awarding punishment for contempt of Court to issue a general warrant of commitment without specifying the nature of the act which constituted the contempt. Would any one allow a Judge to commit a man to a Criminal Jail for six months with hard labor, without specifying what the contempt was? According to the ordinary Criminal Procedure, a proper charge was required to be made out against the offender, and punishment was awarded accordingly. But in ordinary cases of refusal to give evidence, or of using opprobrious language, it appeared to him (the Chairman) that a fine of 200 Rupees, and simple imprisonment in the Civil Jail for one month in default of payment, were sufficient.

He thought it unnecessary to enter into any discussion as to whether European British subjects ought or ought not to be subjected to the Mofussil Criminal Courts, and tried for contempts under the Penal Code, for it had already been decided that European British subjects were not to be tried by those Courts. Therefore, if a European British subject was to be punished for any Criminal offence, he must be tried by the Court that could deal with him as regards Criminal offences. But in case of an actual and not of a constructive contempt of Court, it was proposed by the Honorable Member for Bombay that the Court might impose a fine of 200 Rupees, or in default of payment, send him to a Civil Jail for a period not exceeding one month, unless the fine were sooner paid. That he understood was the effect of the amendment proposed by the Honorable Member for Bombay. It was not very often that Courts of Justice had to punish for contempts. But if it were known that a Court had no power to punish, insulting language might be resorted to, and the administration of justice might be brought into contempt. He thought that every Court should have the power of protecting itself from insult, and of putting a stop at once to any interruptions that might be offered to its proceedings. He quite agreed with the Honorable Member for Bombay that the punishment for contempt of Court, speaking of it simply as contempt in the face of the Court, should be punished in the same way as it had always been heretofore, and he should therefore support the amendment of that Honorable Member so far as regarded the first two Sections proposed by him.

MR. HARINGTON said, there appeared to be some misunderstanding in respect to the history of the legislation proposed in the part of the Code of Criminal Procedure which they were now discussing or as to the course followed in regard thereto. He understood the Honorable and learned Chairman to say that he thought no Legislature would consent to give any Civil Court the power of awarding punishment for a contempt committed against itself to the extent provided by the Indian Penal Code.

THE CHAIRMAN.—Not summarily.

MR. HARINGTON said, the question was not whether the punishment should be awarded on what was called a summary conviction or after a regular trial, but whether the Civil Courts should be allowed, under any circumstances, to award imprisonment as well as fine for contempt of Court within the limits prescribed by the Penal Code. The word *summary* was not to be found in the new Code of Criminal Procedure; but he was quite willing to agree to any form of trial which might be necessary or proper for the protection of the accused party. Now, what was the proposition of the Royal Commissioners. Section 208 of the Code of Procedure prepared by them said—"When any such offence as is described in Clause 197 of the Penal Code" (that was, as explained in a foot-note, the offence of insulting or interrupting a Court of Justice) "is committted in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court"—not to some

other authority, but to such Judge or Court—"to punish the same as for a contempt of Court and to adjudge the offender to punishment as authorized by the said Clause," namely, simple imprisonment not exceeding six months, or a fine not exceeding one thousand Rupees, or both. It was clear, therefore, that the Royal Commissioners saw nothing opposed to sound principles in giving to Civil Courts power to punish, to the full extent allowed by law, contempts committed against themselves, and that they thought it right that the Civil Courts should have this power though, in the case of the subordinate Civil Courts in this country, they considered it expedient to place some restriction upon their powers of punishment, leaving the higher Courts only to award the maximum punishment provided by the Code. This was quite proper, and was exactly what he had proposed; and when he found that his proposition had the support of such men as Sir John Romilly, Sir John Jervis, Mr. Cameron, Mr. Robert Lowe, Mr. Macleod, Mr. Daniel Eliott, and the other gentlemen named in the Royal Commission, he did not think there could be any thing wrong in it. He certainly was not singular in his views.

The Codes of Civil and Criminal Procedure prepared in England, including the Chapters relating to contempts of Court, as framed by the Royal Commissioners, were embodied, word for word, in the Bills introduced into this Council by the Honorable and learned Vice-President, and as he had already noticed no objection was taken by any Honorable Member to the Chapters in question on the motion for the second reading of the Bills. He would not lay any further stress upon what had taken place up to this stage of the two Bills, because the Honorable and learned Vice-President reserved to himself the right, which he conceded to every other Honorable Member then present, of proposing any alteration in the two Bills which at any future stage, whether in Select Committee or in the Committee of the whole Council, might appear proper. But it was said that the Code of Civil Procedure, passed by this Council, did not include the Chapter of the English Code relating to contempts of Court to which he had been referring, but left the law as it was contained in Act XXX of 1841. He was able to explain the cause of the omission. The Bills containing the two Codes, as prepared in England, were referred to Select Committees composed of the same Members, and it was intended that the two Bills should be reported together; but when the revision of the Bill containing the Civil Procedure Code was completed, it was found that the Penal Code which was to fix the future punishments for contempts of the Civil as well as of the Criminal Courts, resistance and evasion of their process, and the like, was still far from being settled, and it was thought better therefore to omit from the Civil Procedure Code the Chapter relating to contempts and to leave the offences referred to in that Chapter to be provided for in the Code of Criminal Procedure, and—until that Code came into operation—to be dealt with under the existing laws in the three Presidencies. This was the sole cause of the omission of the Chapter in question from the Civil Procedure Code. The Chapter had been included substantially, as framed by the Royal Commissioners, in the Criminal Procedure Code as settled in the Committee of the whole Council the year before last. In the recent revision of the Code by a Select Committee, of which the Honorable Member for Bombay was a Member, it was not considered necessary to make any alteration in the powers proposed to be given to the Civil Courts of punishing for contempts of Court committed against themselves to the full extent provided by the Penal Code, nor, if he recollected rightly, did the Honorable Member for Bombay make any objection at the time of such revision to the Civil Courts being vested with these powers. No doubt the Select Committee had overlooked the effect which one of the earlier Sections of the Criminal Procedure Code,

relating to the cognizance of offences when committed by European British subjects, would have upon the Chapter relating to contempts of Court. The recent discussion upon Chapter X had brought this to light, and it was then at once seen that it would be necessary to revise the Chapter. The Honorable Member for Bombay seemed to think that he (Mr. Harington) had not sufficient grounds for what he had stated on the subject of the intentions of the framers of the Indian Penal Code in respect to the tribunals by which contempts of Court should be punished. What he said was to express his full conviction that, in enhancing the punishment for contempt of Court, the framers of the Indian Penal Code never contemplated any alteration in the Procedure Code for the trial and punishment of the offence or any interference with what they must have known was the existing practice, and when he stated as a fact that two of the gentlemen who had taken an active part in the preparation of the Penal Code, namely, Mr. Macleod and Mr. Millet, were also Members of the Royal Commission which framed the Code of Civil Procedure, one of the Sections of which declared that the Court against which a contempt was committed might punish the offence by sentencing the offender to the punishment authorized by the Penal Code, he thought he had said enough to remove all doubt upon the point from the mind of the Honorable Member for Bombay, and to show what were the intentions of the framers of the Indian Penal Code. [Mr. Erskine shook his head by way of dissent.] Then the Honorable Member for Bombay had taken them to America and had quoted to them the opinions of Mr. Livingston in support of his views. He would follow the Honorable Member to America and read to them what was the provision of law upon the point under discussion in the Code of New York, which was admittedly one of the best Civil Codes ever framed, and seeing that Mr. Livingston's opinion was given in the year of 1820, and that the Code of New York was published in the year 1850, he could come to no other conclusion than that, as in this country, a great change had taken place as to what should be regarded as a reasonable extent of fine and imprisonment for contempts of Court, so a great change had similarly taken place in the minds of American Jurists and Lawyers as to the tribunal by which the offence should be tried and punished. The Code of New York said—"Every Court of Justice, except a Court of Conciliation, and every Judicial Officer, has power to punish contempts by fine or imprisonment or both." A little further on the Code said —"The Court or Officer" (that was, the Court or Officer against which the offence was committed) "must determine whether the person proceeded against is guilty of the contempt charged, and if he be found guilty, a fine must be imposed upon him not exceeding 250 dollars, or he must be imprisoned not exceeding six months, or both" So here they had the same penalty as that provided in the Indian Penal Code and the same procedure as that proposed by the Royal Commissioners. It was quite possible that the framers of the Indian Penal Code had copied their Section from the New York Code.

MR. ERSKINE pointed out that the Indian Penal Code was framed before the New York Code.

MR. HARINGTON admitted that the Honorable Member for Bombay was right, and observed that it was possible the framers of the New York Code had copied their Section from the Indian Penal Code; but that, however this might be, the framers of both Codes were agreed as to the extent of fine and imprisonment which might be awarded for contempts, and however much he might respect Mr. Livingston's opinion, he (Mr. Harington) did not think that Mr. Livingston's individual opinion should be allowed to outweigh the opinions of the framers of the Indian Penal Code, and of the New York Code, and of the Royal Commissioners who had drawn up the Codes of Civil and Criminal Procedure for this country. The Honorable Mem-

ber for Bombay objected to his having stated that the amendment of the Honorable Member implied distrust in the Civil Courts. The Honorable Member said it was not because he distrusted the Civil Courts that he would not give them the large powers proposed in his (Mr. Harington's) amendment, but because he considered that no Courts should have such powers for punishing offences committed against themselves. On this point, all that he (Mr. Harington) could say was that the amendment of the Honorable Member for Bombay proposed to give the Civil Courts power to punish for contempts committed against themselves up to a certain extent but not to the extent provided by the Indian Penal Code. Was it then a question of principle or a question of trust? If it was a question of principle, they violated the principle when they allowed the Court against which the offence was committed to punish to the extent proposed. The Honorable Member for Bombay seemed to admit this, and he understood him to say that, if it were possible, he would be glad to delegate the punishment in each case to some other tribunal; but that this could not be done without great public inconvenience. Well, then, having violated the principle which it was thought should govern the procedure in such cases, he (Mr. Harington) considered that they were bound to fix a scale of fines. It could not be right that a Moonsiff should have power to impose as heavy a fine as the Sudder Court. It could not be right that the Sudder Court should not have power to impose a heavier fine than a Moonsiff He thought that this was a very serious objection to the first amendment proposed by the Honorable Member for Bombay. Then, again, had they taken into consideration the conflicts of judgment to which that amendment would certainly give rise? This had been noticed by the Honorable Member for Bengal. The Civil Court might find a man guilty of contempt, but the Magistrate or Joint-Magistrate might disagree. The Civil Court might think a witness ought to have answered a particular question or to have produced a particular document. The Magistrate or Joint-Magistrate, to whom the case was referred, might think otherwise. In most cases it would be merely a matter of opinion. If both Courts agreed, what, he would ask, was gained by a second trial before a different tribunal? If they differed, why was the opinion of the Magistrate to prevail? He had not considered the question in its bearing upon the European community alone, but in its general bearing upon all classes alike. Looking at the question, however, in its European aspect, were they wise at this time to declare that, if a European British subject was guilty of contempt in the Court of the Judge of Meerut or it might be of Lahore or of Peshawur, and the Judge of the Court in which the offence was committed thought that a fine of 200 Rupees would not be an adequate punishment, and that the offender should be imprisoned, the Judge should not have power to award imprisonment to the extent provided in the Penal Code, but must send the accused person all the way to Calcutta with the witnesses (he himself perhaps being one) in order that he might be tried before the Supreme Court. He did not think that the European community could desire this. He believed that in most cases, if a European British subject were found guilty of a contempt in a Zillah Court up the country, he would prefer that the Court should dispose of the case rather than that he should have to come all the way to Calcutta, in the middle, perhaps, of the hot winds, to be tried before the Supreme Court.

He was dealing now with offences which were punishable with simple imprisonment only. He repeated what he had already said to-day that he would not deprive our European British subjects of a single privilege which they at present enjoyed in connection with the administration of criminal justice until a proper equivalent was provided; but he thought it most unwise at this time to strain or to attempt to extend those privileges, which would be the effect of the first amend-

ment of the Honorable Member for Bombay if that amendment were adopted. In the amendment which he (Mr. Harington) had proposed, he had provided that no one, European or Native, should be imprisoned for contempt except by order of the Zillah Judge or Magistrate, and that any imprisonment awarded by either of those officers should be undergone in the Civil Jail. Having made this provision, he thought that he had done all that was necessary for the security and protection of the European community, and that they could not reasonably require more. He believed he had now noticed all the points calling for reply from him in the remarks of the Honorable Members who had addressed the Committee, and he would not further occupy the time of the Committee.

SIR BARTLE FRERE said, he thoroughly agreed with every word that had fallen from his Honorable friend the Member for Bombay who had fully and clearly stated the views which he (Sir Bartle Frere) entertained, which he had always entertained, and which he had stated when the subject was first discussed in Council three sittings ago. He would therefore content himself with saying that he ceased to regret the discussion and misunderstanding which had taken place on this subject, and the mode in which his own views and those of other Honorable Members had been misrepresented, seeing that the result had been a great improvement on the law as it had hitherto stood, for he considered that the amendment now proposed by his Honorable friend (Mr. Erskine) was a very great and essential improvement, not only on the Code as it stood before, but on the existing English Law. He would not follow his Honorable friend in all the arguments which he had adduced. He would simply address himself to one or two of the objections urged by the Honorable Member for the North-Western Provinces and the Honorable Member for Bengal; and he trusted that his remarks might have the effect of bringing the Council to a unanimous vote on this question. The first point to which he would refer was whether, as had been supposed by those Honorable Members, it would be derogatory to the dignity of the Superior Courts to have gross cases of contempt committed before them referred to the Magistrates. He would put it to those Honorable gentlemen whether the contrary was not the fact, and whether it was not rather in consonance with Oriental or Mediæval views of procedure, than with those befitting a British Court of Justice, to allow the Judge summarily to award such punishments as those provided by the Penal Code. Take the case of an insult offered to a high judicial functionary in England, the Lord Chancellor, for instance. Did the Honorable Members imagine that that high authority would in any way increase his dignity by reverting to some old by-gone law summarily to punish his insulter on the spot by inflicting some of the severe punishments authorized by ancient Statutes? Would they not think such a proceeding to be an act befitting rather an Oriental Despot than an English Judge? He (Sir Bartle Frere) felt confident that it would be impossible for any Judge, however exalted he might be, without loss of dignity summarily to deal with such cases. He also wished to say a few words, in which he was sure his Honorable friend the Member for Bombay would agree with him, in regard to a remark which fell from the Honorable and learned Judge opposite (Sir Charles Jackson). The Honorable and learned Judge seemed to imply that the Honorable Member for Bombay had taken objection to the practice of the English law. Now he (Sir Bartle Frere) was confident that his Honorable friend had not objected to the practice of the English law, for his amendment was framed in strict accordance with the present practice of the highest English Courts. But that was quite a different thing from the strict letter of the law as it stood in the Statute Book. In this, as in many other matters, the practice of a long series of years, during which the law had been administered by Judges of the highest character, had mitigated and greatly altered the strict

letter of the law. He would not follow the Honorable Member for the North-Western Provinces through his comparison of the New York Code with that of Mr. Livingston, because he (Sir Bartle Frere) thought the Honorable Member would find, if he referred to the works of Judge Story, that that eminent lawyer, who was a disciple of Mr. Livingston, looked upon him as an authority far in advance of any living jurist of the Northern States and regretted that those who had the framing of the New York and other Codes were far behind Mr. Livingston as law-reformers. Then with regard to what the Honorable Member said as to the insufficiency of the punishment, he (Sir Bartle Frere) thought that we should not always be referred to the case of the typical European brought down from Peshawur to be tried at Calcutta. He would seriously put it to the Honorable Member whether he did not think that a fine of 200 Rupees, or a month's imprisonment, was not sufficient punishment to leave in the power of any Judge of the offended Court to inflict on the spot, with power to send the offender for trial before the Supreme Court if further punishment were necessary. He quite agreed with the Honorable Member for Bombay that his amendment made ample provision for the dignity and security of the highest Courts, and should therefore vote in support of it.

SIR ROBERT NAPIER said that, in supporting the amendment of the Honorable Member for Bombay, he should say only a few words. The subject had been most clearly explained by the able arguments which had been adduced on both sides of the question; but it appeared to him that it really did not require so much argument to reduce the subject to two simple mathematical questions.

Firstly.—Should the insulted Judge be the accuser and punisher in his own cause? Theoretically he should not be so, but practically he must have a certain limited power of punishment. Unless he had such a power, the Mofussil Courts would become like some American ones, where a cast suitor would take off his coat and propose to settle the amount of damages with the Judge outside.

Secondly.—Was the power proposed for the Judge sufficient? In his opinion a fine of 200 Rupees, or imprisonment for one month, was ample, and he should cordially support the amendment of the Honorable Member for Bombay.

MR. HARINGTON said he regretted that the Honorable Member of the Government (Sir Bartle Frere) had not spoken before he (Mr. Harington) had replied to the objections taken by other Honorable Members to his amendment, because he found himself compelled again to trespass upon the time of the Committee. The Honorable Member of the Government had declared the views expressed by himself and the Honorable Member for Bengal to be oriental in their character and to be despotic.

SIR BARTLE FRERE said that, if the Honorable Member for the North-Western Provinces took exception to the term "Orientalism," he (Sir Bartle Frere) was quite willing to withdraw it, and to substitute "mediœvalism" for it. He did not mean to use the word in any offensive sense, but simply to express a summary and despotic mode of procedure as opposed to the grave, deliberate, and dignified process which would befit a civilized Judge of our own time and nation.

MR. HARINGTON resumed. The Honorable Member of Government had used the word "Oriental," and he thought he had also used the word "Despotic." All that he (Mr. Harington) wished to say was that the provisions of the Code of Procedure which he was now advocating were imported from England and America.

THE CHAIRMAN said, he wished to say one word in regard to what had fallen from the Honorable Member for the North-Western Provinces, as to whether it was wise to make a change. It was the Honorable Member who wished to make a change, and was proposing a change without

showing that the law which at present existed had been found insufficient. He (the Chairman) must say that, during the whole time he had practised at the bar in England, he had never heard of a case of a man being fined 1,000 Rupees, and sentenced to six months' imprisonment for refusing to appear upon a subpœna. The parties were generally left to their Civil remedy. In the course of his practice and experience he could not recollect a single instance of the kind, and he did not think that the Honorable Member could cite any precedent of a European having been sent down from Peshawur for trial in such a case.

MR. HARINGTON said, it was hardly fair to charge him with a desire to change the law. It was the Penal Code, passed last year, which had already changed the substantive Criminal law, and the alterations considered necessary in the Code of Criminal Procedure were proposed, not by him (Mr. Harington), but by the Royal Commissioners. He certainly never recollected a case of contempt in which he would have awarded a fine of 1,000 Rupees, but it did not follow that no case calling for a more severe punishment than could now be awarded would ever occur. The framers of the Indian Penal Code must be presumed to have contemplated the possibility of such a case occurring, otherwise they would scarcely have introduced into the Code prepared by them the Section which allowed a sentence of six months' imprisonment and a fine of 1,000 Rupees. Under the existing law, the punishment for contempt was awarded by the Court against which the offence was committed, and no case of the nature of that supposed by the Honorable and learned Vice-President could arise. It was under the amendment proposed by the Honorable Member for Bombay that such cases might and would arise.

THE CHAIRMAN said, although the Penal Code did make contempt of Court an offence punishable criminally, it did not alter the powers of the Civil Courts by allowing them to take cognizance of it.

After some further conversation, the following division was taken on Mr. Erskine's amendment :—

Ayes 5.	*Noes* 3.
Sir C. Jackson.	Mr. Seton-Karr,
Mr. Erskine.	Mr. Forbes.
Sir Robert Napier.	Mr. Harington.
Sir Bartle Frere.	
The Chairman.	

So the Motion was carried, and the Sections were passed after some verbal amendments,

MR. HARINGTON'S third proposed Section with amendments was then passed to follow the above Sections as the 3rd and last Section of Chapter X.

Verbal amendments were made in Section 138 on the Motion of Mr. Harington.

Section 205 of the Penal Code was introduced in the specification of Sections of that Code contained in Section 139 of this Bill, on the Motion of Mr. Erskine.

Section 141 was passed after a verbal amendment and the addition of the following words (on the Motion of the Chairman,)

" and the Court shall have power to send the accused person in custody or to take sufficient bail for his appearance before such Magistrate and may bind over any person to appear and give evidence on such investigation."

Verbal amendments were made in Section 208.

MR. HARINGTON moved the introduction of the following new Sections after Section 344 :—

" No finding by a Court of the offence of criminal misappropriation of property under Section 403 of the Indian Penal Code, or of criminal misappropriation of property possessed by a deceased person at the time of his death under Section 404 of the said Code, or of criminal breach of trust under Section 405 of the said Code, or of criminal breach of trust by a carrier wharfinger or warehouse-keeper under Section 407 of the said Code, or of criminal breach of trust as a clerk or servant under Section 408 of the said Code, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of theft under Section 378 of the said Code, or the offence of theft in a building tent or vessel under Section 380 of the said Code, or the offence of theft as a clerk or servant of property in the

possession of his master under Section 381 of the said Code.

No finding by a Court of the offence of theft under the said Section 378, or of theft in a building tent or vessel under the said Section 380, or of theft as a clerk or servant of property in the possession of his master under the said Section 381, shall be liable to be reversed or altered by any Court, whether on appeal or revision, on the ground that the offence proved by the evidence was the offence of criminal misappropriation of property under the said Section 403, or the offence of criminal misappropriation of property possessed by a deceased person at the time of his death under the said Section 404, or the offence of such criminal misappropriation under the said Section, the offender being at the time of the person's decease employed by him as a clerk or servant, or the offence of criminal breach of trust under the said Section 405, or the offence of criminal breach of trust as a carrier wharfinger or warehouse-keeper under the said Section 407, or the offence of criminal breach of trust as a clerk or servant under the said Section 408.

Provided that nothing in the last two Sections shall preclude the Appellate Court in any case mentioned therein from reducing the punishment awarded by a lower Court in such case within the limits prescribed for the offence which such Appellate Court shall consider to have been proved by the evidence against the accused person."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above :—

"No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or defect either in the charge or in the proceedings, on trial, unless the person accused shall have been sentenced to a larger amount of punishment than could be awarded for the offence of which in the judgment of the Appellate Court the accused person ought upon the evidence to have been found guilty, or unless in the judgment of the Appellate Court the person accused shall have been prejudiced by such error or defect; and in case the person accused shall have been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence."

Agreed to.

Several amendments were made in the Schedule.

MR. HARINGTON moved that the following new Section be prefixed to the Bill :—

"This Act shall be called the Code of Criminal Procedure."

Agreed to.

The Preamble and Title were passed as they stood ; and the Council having resumed its sitting, the Bill was reported with amendments.

CIVIL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON moved that the following new Section be inserted after Section 16 :—

"No appeal shall lie from any order or decision passed in any suit instituted under Section XV Act XIV of 1859 (to provide for the limitation of suits), nor shall any review of any such order or decision be allowed."

Agreed to.

SIR CHARLES JACKSON moved that the following new Section be introduced before Section 28 :—

"Wherever the word 'pleader' is used in this Act it shall include the words 'counsel' and 'advocate.'"

Agreed to.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported with amendments.

FLOGGING.

MR. HARINGTON moved that the Petition from the British Indian Association, presented to the Council in the early part of the day, relative to the Bill "to provide for the punishment of flogging in certain cases," be printed.

Agreed to.

CIVIL COURTS.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces, be laid upon the table and referred to the Select Committee on the Bill "to constitute Courts of Civil Judicature."

Agreed to.

CATTLE TRESPASS.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act III of 1857 (relating to trespasses by cattle)" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, August 24, 1861.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General,* presiding.

Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	
C. J. Erskine, Esq.,	

CATTLE TRESPASS.

THE PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

THE CLERK reported to the Council that he had received a communication from the Government of Bengal to the address of Mr. Seton-Karr regarding the proposed scheme for the registration of Nij-jote and other Ryotty tenures.

MR. SETON-KARR moved that the communication be printed.

Agreed to.

FINES FOR RIOTS.

THE CLERK also reported that he had received two communications from the Government of Bengal regarding the enactment of a law for fining communities for offences the perpetrators of which could not be discovered.

MR. SETON-KARR moved that the communication be printed.

Agreed to.

COURTS OF REQUESTS (STRAITS' SETTLEMENT).

MR. FORBES presented the Report of the Select Committee on the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MALACCA LANDS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to regulate the occupation of land in the Settlement of Malacca."

PORT BLAIR.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to regulate the administration of affairs in Port Blair."

PUBLIC CONVEYANCES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for regulating public conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

REPEAL OF REGULATIONS AND ACTS (CRIMINAL LAW AND PROCEDURE.)

MR. HARINGTON moved the first reading of a Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure." He said that the object of this Bill was to repeal and to remove from the Statute Book all the Regulations and Acts of the three Presidencies which would be virtually superseded and rescinded from

the date on which the Indian Penal Code and the Code of Criminal Procedure would come into operation, that was, he hoped, from the 1st January, 1862. The Bill had been framed upon the model of the Bill which was brought in by him in the year 1859 for the repeal of the Regulations and Acts which were superseded by the Code of Civil Procedure contained in Act VIII of that year. The Bill consisted merely of a Preamble and an enacting Clause. The Regulations and Acts to be repealed had been entered in a Schedule with appropriate columns which was annexed to the Bill. The portion of the Schedule which related to Madras had been prepared by the Honorable Member for that Presidency, and the Honorable Member for Bombay had prepared the portion relating to the Presidency which he represented. The number of Regulations and Acts to be repealed wholly or in part, exceeded two hundred. This would show the Council the extent of the consolidation and codification of the Criminal laws of the three Presidencies which had been effected by the two Codes mentioned at the commencement of these remarks.

The Bill was read a first time.

ZEMINDARY DAWKS (BENGAL.)

MR. SETON-KARR moved the first reading of a Bill "to improve the system of zemindary dawks in the Provinces subject to the Government of Bengal." He said—Sir, I hope not to occupy the time of the Council very long in explaining the provisions of this Bill. The Council are, no doubt, aware that by an old law of 1793 the liability of maintaining these dawks was first imposed on the zemindars. The law was amended by Regulation XX of 1817, which provides, in the fullest and clearest manner, for the various duties which the zemindars are expected to perform in aid of the Police, and in the transport of the post between Police Stations and the offices of the Magistrates. But very frequent complaints have been made by the executive authorities, of the negligence with which these services are rendered. The system was as follows. The law required the zemindar to maintain and pay a certain number of dawk runners to carry the letters and wallets, but the law did not allow the Magistrate to interfere with the appointment, removal, or payment of the wages of these men. It merely exposed the zemindar, for neglect of duty, to a fine of 100 Rupees, or, in default of payment, to one month's imprisonment in the civil jail. Thus, when great delay and uncertainty were experienced in the delivery of letters, the course was, for the Magistrate to refer to the agent of the zemindar, who referred to his employer, who, in his turn, after a good deal of correspondence, paid up the wages of the peons, who at last consented to perform their duty with some regularity. Matters would then go on for some time on an improved footing, till the effect of the remonstrance wore off, and the delay was again felt quite as severely as before.

However, to obviate these difficulties, certain arrangements had been adopted by some energetic and judicious Magistrates, who had induced the zemindars to commute their liability of service, for a lump sum to be made over to the Magistrate, and the Magistrate then appointed the runners, paid their wages, and exercised a close supervision over them in the performance of their duties. These arrangements had been attended with great success in the district of Tirhoot, in that of Nuddea, and in that of Burdwan. In the last named district, Mr. H. B. Lawford, when Magistrate, had so ably managed matters, that he reduced the number of runners, paid or supposed to be paid at the rate of 3 Rupees a month, from one hundred and forty two, to fifty-four, paying them at the increased rate of 4 Rupees a month and conveying the dawk by their means with far greater certainty and speed. Now, there is no reason whatever why this plan, tried and found to answer in three districts, should not, by law, be extended to the whole of Bengal instead of being left dependent on chance or caprice, or on the greater

or less tact and good management of individual Magistrates.

The object, then, of the present Bill is to compel all zemindars to commute their liability of service for a money payment. The Magistrate of each district or other officer appointed by Government, will be empowered to fix a lump sum as the estimated expense for conveying all the thannah dawks to and fro in his district, and he will then apportion the amount to be paid, rateably, by each zemindar or farmer of land. To this end he will be enabled to appoint a Committee composed of experienced officials and of landholders, who shall determine the quotas to be contributed by each landholder in proportion to his Sudder Jumma.

Another principle of the new Bill is that the liability, which has been hitherto common to those zemindars only through whose estates the thannah dawk might run, should be extended to all zemindars paying revenue to Government, or to farmers of land. whether the line run through their estates or not. It is true that Regulation XX of 1817 does not, in words, confine the liability to the former class, but this has been the result in practice; and this it is now proposed to alter.

Before the Bill had been framed, the Lieutenant-Governor had consulted that well-known body, the British Indian Association, as one interested in the subject, and I am glad to say that its members recognize the expediency of the change and do not withhold their co-operation. The Association, however, seems haunted by some dread, lest the proposed law should, in any way, infringe the terms of the Perpetual Settlement, by providing for the realization of dues under the law in the same way as dues on account of revenue. I can assure you, Sir, that I should be the last person to introduce, or even to countenance, any proposal which would have the effect of endangering or vitiating the principles of that great and statesman-like measure, to which is owing so much of the agricultural resources, the commercial wealth, and the social prosperity, that distinguish this part of India from so many other parts. And I have accordingly taken care to provide that money due, or fines imposed, under this enactment, shall be realized by distraint and sale, or in default of assets, payment shall be commutable to one month's imprisonment in the civil jail.

I believe, too, that when the runners shall be appointed, paid, and removed by the Magistrates, the Government have it in contemplation to make applicable to these zemindary dawks, some of the stringent provisions of the Postal Act, XVII of 1854, Sections 50 to 56. As the supervision over the runners will become close and systematic, it will be necessary to vest the Magistrates with power to punish cases of gross negligence and misconduct, instances of which may be brought to their notice. But this will be a question for the consideration of the Executive Government in communication with the Governor-General in Council, who has the power to extend the Law of 1854 from the public dawks to any other class of dawks.

It is not intended that the new law shall apply to the province of Arracan, or to that of Assam, with the exception of the district of Gowalpara, which is settled in perpetuity, and which may, therefore, be treated like any other district in the Regulation Provinces. With these views, Sir, I have the honor to move the first reading of this Bill. I believe that it will diminish the expense of these dawks and increase their efficiency; that it will obviate the anomaly of Magistrates being unable to punish the dawk runners for negligence in a service which is intimately connected with the early communication of intelligence and with the detection of crime; that it will render light the incidence of taxation on all the zemindars of the districts, while it will save them from constant annoyance and vexation, and that it will at last place the whole postal system on a sound and satisfactory footing.

The Bill was read a first time.

LIMITATION OF SUITS.

SIR CHARLES JACKSON (in the absence of the Chief Justice) postponed the Motion which stood in the Orders of the Day for the second reading of the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)."

CRIMINAL PROCEDURE.

The Order of the Day being read for the third reading of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter"—

MR. HARINGTON moved that the Bill be re-committed to a Committee of the whole Council for the purpose of considering certain proposed amendments therein.

Agreed to.

MR. HARINGTON moved the introduction after Section 31 of the following Section taken from the existing law which was proposed to be included in the general Repeal Bill, but the provisions of which it was considered desirable to continue in force :—

"Whenever any person is charged with being a thug, or with murder as a thug, or with dacoity with or without murder, or with having belonged to a gang of dacoits, or with having belonged to any wandering or other gang of thieves associated for the purpose of habitually committing theft or robbery and not being a gang of thugs or dacoits, the offence may be enquired into in any district in which the accused person is, by any Magistrate competent to commit to a Court of Session, and the accused person may be committed to the Court of Session to which such Magistrate is subordinate."

Agreed to.

Section 41 provided as follows :—

"Nothing in this Chapter shall interfere with the jurisdiction given by 53 George III c. 155, s. 105."

MR. HARINGTON moved the addition of the following words to the above Section :—

"or Act VII of 1853 (to extend the jurisdiction of Magistrates under the 53 George III c. 155, s. 105, in cases of assault, forcible entries, and other injuries accompanied by force not being felonies)."

Agreed to.

SIR CHARLES JACKSON said that, to make the Section consistent with the decision already come to by the Council, he would move the addition of the following proviso after the above :—

"Provided that the jurisdiction given by the said Statute and the said Act shall be exercised only by a Justice of the Peace."

The Motion was carried, and the Section as amended then passed.

A verbal amendment was made in Section 43, on the Motion of Mr. Forbes.

MR. HARINGTON moved the introduction of the following new Section after Section 47 :—

"When any person shall be sentenced to imprisonment, it shall be lawful for the local Government to order the removal of such person during the period prescribed for his imprisonment from the jail or place in which he is confined to any other jail or place of imprisonment within the jurisdiction of the same local Government."

He said that this also was a provision of the existing law. It was a very proper provision and it was desirable that it should find a place in the present Bill. It was included in the list of laws proposed to be repealed by the Bill brought in by him to-day.

Agreed to.

Section 71 provided as follows :—

"A Magistrate may, (notwithstanding such summons,) either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person *in all cases in which he might so have done had no such summons been issued.*"

MR. FORBES moved the omission of the words in italics at the end of the Section.

The Motion was carried, and the Section as amended then passed.

Section 100 provided as follows :—

"It shall be the duty of every Police Officer to prevent, and he may interpose for the pur-

pose of preventing, the commission of any offence specified in Column 3 of the Schedule annexed to this Act as an offence *for which Police Officers may arrest without warrant*"

MR. FORBES said that, in looking over the Schedule, he found that, among the offences for which a Police Officer could not arrest without warrant, there were many of great public importance, as, for instance, the removal of a landmark, poisoning cattle, rescuing a prisoner of State, going intoxicated into any place of public resort, &c. Suppose the mail steamer were coming up the river, and a person tried to remove the buoy on the "James and Mary's Shoal" in the view of a policeman; the policeman could not prevent him from committing the offence, because, under this Section, it was one for which he could not arrest without warrant. The policeman must let the offence be committed, and then proceed to obtain a warrant for the apprehension of the offender. He (Mr. Forbes) thought that so great a public evil ought to be prevented, and not only punished when committed. He (Mr. Forbes) should therefore move the omission of the words in italics at the end of the Section.

MR. ERSKINE said, he did not think it would be safe to go to the full length proposed by the Honorable Member for Madras. One of the material objects which the Select Committee, in preparing this Chapter, proposed to itself, was to prevent Police Officers from interfering in petty cases. That was also a point strongly insisted upon by the Police Commissioners. He should be sorry, therefore, if the amendment of the Honorable Member for Madras were adopted. Indeed, in the Madras Police Bill there was a Section which prohibited the Police altogether from interfering in petty cases. It was that habit of constant interference which had been felt to be so vexatious and objectionable. Moreover, this Section merely laid on the Police a positive obligation to interfere in certain cases, but did not prohibit their interference in others—only if they did interfere in other cases on their own discretion, they would have specially to justify such interference. He might add that the Section of the General Police Bill lately passed, which prescribed the duties of the Police, expressly declared that among other things they were "to prevent the commission of offences and public nuisances."

MR. HARINGTON said, no doubt the alteration proposed was large, and it would greatly increase the powers of the Police, but it was difficult to make it of a more restrictive character without shutting out cases in which immediate interference on the part of the Police was obviously necessary. The Honorable Member for Madras had mentioned several cases in point. If the amendment of the Honorable Member for Madras were adopted, he (Mr. Harington) should propose an amendment in Section 102 which, he thought, would to some effect remove the objections taken to the amendment they were now considering.

MR. ERSKINE said, he thought it was an erroneous reading of this Section to suppose that it prevented all interposition by the Police.

MR. FORBES said, it was enacted in Section 103 that the Police might interfere to prevent any injury attempted to be committed in his view to any public building, work of art, road, bridge, tank, or water channel; and it was quite as essential that they should interfere in the protection of landmarks.

MR. ERSKINE said that he had noted the omission of all allusion to public landmarks and had intended to refer to it in connection with Section 103. But he did not think that the Police should be required to prevent the removal of private landmarks.

MR. FORBES said, he must say that, if he were challenged to answer that question, he should reply that in his opinion such private landmarks ought to receive the protection of the Police. Revenue surveys were carried out at a vast expense, and not only all villages but all fields were demarcated; and it was obvious that, if these demarcations were removed, the whole value of the survey was lost.

He had no doubt, therefore, that private landmarks ought to be protected.

MR. SETON-KARR said that, if the landmarks had been erected by, or even on account of, Government, it would be very right for Police Officers to interfere to prevent their removal, because such landmarks might be considered public property; but Police Officers should not interfere in the case of private landmarks, erected solely by and for private individuals. Then to take a larger view of the question, the offences enumerated in Chapters X and XI were not such as Police Officers could interfere with, and the amendment proposed seemed to him too indistinct and wide. He should hope that the Honorable Member for Madras would specify more distinctly the kind of offences which he had in view.

MR. FORBES said that it was a great mistake to call the survey marks to which he had referred public property. They were erected at the expense of the Ryots.

SIR CHARLES JACKSON said, he thought this discussion had raised an important question; namely, whether a mere Police Officer should be allowed to decide in every case whether a person was going to commit an offence or not. It might be very difficult in many cases to decide whether a person had a criminal intention: would you confer the power of deciding all such cases to Police Officers? That would be the effect of the amendment of the Honorable Member for Madras, for, if it were carried, that power would be given to every Police Officer, however low his rank might be in the Police. He must object to giving any such large powers to such Police Officers as we had in this country. It might be true that Police Officers should have more power than the Act now gave them; but if the Honorable Member for Madras found in the Schedule any case in which he thought that a Police Officer ought to interfere without a warrant, he should propose an alteration to that effect in the Schedule instead of proposing such a general amendment as he had done.

SIR BARTLE FRERE said, he thought that the Honorable Member for Madras had rather mistaken the object of the Section. If a Police Officer saw an offence going to be committed in which he was allowed to arrest the offender without warrant, then it was clearly his duty to interfere to prevent the offence being committed, and he ought to be punished for not preventing it. This Section made any such neglect so punishable, but it did not limit his discretion in other cases. No doubt the removal of landmarks was a very serious matter, but there was a great difference between landmarks to guide vessels in a river or at sea and landmarks on land. Now, he went entirely with the Honorable Member as to the importance of these latter landmarks, but he must say that there was no more prolific source of extortion and oppression than the attempts of the Police to interfere in petty cases connected with the removal of landmarks. For one case which the policeman would prevent by interposing, he might inflict annoyance in a thousand; and therefore he (Sir Bartle Frere) thought that the Section should stand as it was.

MR. FORBES said that, as the sense of the Council was against it, he would not press his amendment, though he must say that his own opinion of its importance remained unaltered. He would, however, reserve to himself the right of moving any amendments to the same effect in the Schedule.

Section 103 was then amended as follows, on the Motion of Sir Charles Jackson (the amendments being printed in italics):—

"A Police Officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public building, work of art, road, bridge, tank, *well*, or water channel, *or to prevent the removal or injury of any public landmark or buoy or other mark used for navigation.*"

A trifling amendment was made in Section 156, on the Motion of Mr. Harington.

BENGAL SECRETARIAT LIBRARY

Section 161 (relating to contempts) concluded as follows :

"If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and, *if necessary, commit the accused person for trial before a Supreme Court of Judicature.*"

MR. HARINGTON moved the substitution of the following words for the words in italics :—

"shall have the same powers of punishing the offender as are vested by the Statute 53 George III c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature."

The Motion was carried, and the Section as amended then passed.

Verbal amendments were made in Sections 225, 230, 291, and 303.

An amendment was made in Section 315, on the Motion of Mr. Harington, empowering the Magistrate to make a reduction in the allowance ordered to be paid by a person for the maintenance of his wife or child or both, on the application of such person, if the Magistrate should be satisfied of an alteration in the circumstances of the person, his wife, or child, justifying such reduction.

Section 278 was passed after an amendment, on the motion of Mr. Forbes.

MR. HARINGTON said, the next Section in which he wished to propose an amendment was Section 350. This Section was contained in the Chapter which related to juries and assessors, and as the Honorable and learned Vice-President had given much attention to that Chapter, and as some of the most important amendments which had been made in it, including the amendment made in Section 350, were made on his Motion, he (Mr. Harington) felt considerable hesitation in proposing any alteration in the Section in the absence of the Honorable and learned Vice-President. The part of the Section to which he objected, said :—

"In any case in which a Jury shall be prepared to deliver their finding, the Judge shall ask the Jury whether they are unanimous, and if the foreman or one of the Jury shall declare that they are not unanimous, the Judge may require such Jury to retire for further consideration. If after such a period as the Judge shall consider reasonable, the foreman or any one of the Jury shall declare that they are not unanimous, the Jury may deliver their verdict."

He (Mr. Harington) thought that if these words were retained, they would lead to frequent misunderstanding and that they might prove positively mischievous. If unanimity in a Jury were essential for the conviction or acquittal of an accused person the case would be different, but unanimity was not necessary. If a certain majority was for conviction, the Court must convict. If a certain majority was for acquittal, the Court must acquit. The prescribed majority then having been obtained either for conviction or acquittal, what was the use of directing the Jury to retire for further consideration, or what was to be gained by such a course? The unanimous verdict would not do more than a verdict consisting of the prescribed majority. The Jury so ordered to retire, would be puzzled. They would often imagine that the Judge did not like the verdict and wanted a different verdict to be returned, and a different verdict might sometimes be the result merely to please, or meet what was supposed to be the view or wish of, the Judge. It was well known to all who had any practice in the Sessions Courts in this country, that during the trial the Jury were often engaged in endeavoring to discover what was the opinion of the Judge rather than in considering what should be the effect of the evidence. He had lately seen some papers from Bombay which fully bore out what he had just said. He begged to move the omission of the words which he had read.

SIR CHARLES JACKSON said, the words proposed to be omitted were introduced on the Motion of the Honorable and learned Vice-President who,

he knew, attached great importance to them, and he (Sir Charles Jackson) should oppose the Motion for their omission. If he recollected aright, the object of the Honorable and learned Vice-President was to secure proper consideration on the part of the Jury before they delivered their verdict and to prevent them from supposing that when they had got the bare majority which the law prescribed, they had done all that was required. He thought that a unanimous verdict, whether the verdict was for acquittal or conviction, would be more satisfactory to the public than the verdict of a mere majority, and the object of the amendment proposed by the Honorable and learned Vice-President being to secure such unanimous verdict, if possible, after full deliberation, he (Sir Charles Jackson) entirely approved of it.

MR. SETON-KARR said that what had been urged by the Honorable Member for the North-Western Provinces was deserving of a good deal of consideration ; but, on the other hand, when he remembered that the provision had not slipped into the Bill by accident, but had been introduced with a deliberate purpose, and that the Jury Sections had been the subject of much care and forethought, he considered that it was too late in the day to introduce such an amendment, and therefore he should be compelled to vote against it.

MR. ERSKINE agreed on the whole with the Honorable and learned Judge (Sir Charles Jackson). He thought the provision to which the Honorable Member, for the North-Western Provinces objected might have the effect of preventing unseemly haste in some cases ; and if in any case the Judge was of opinion that no good would result from acting on the discretion it allowed him, of course he would abstain from doing so.

MR. HARINGTON said, he would accept the ground upon which the Honorable Member for Bombay advocated the provision in question, but then the provision should not be restricted in the manner proposed. There might be as much haste on the part of the Jury in coming to a unanimous finding as when the finding was that of a majority only, and whenever the Judge had reason to believe that the Jury had been hasty in forming their decision or had not acted with due deliberation, he should have power to remand the case to the Jury for further consideration, even although the verdict might be unanimous. He did not think that a unanimous verdict, obtained by what he must call coercion, would be more satisfactory to the public at large than a verdict consisting of the prescribed majority. It certainly would not be so to the accused person whether the verdict was for acquittal or conviction. After what had fallen from the Honorable Members who had spoken, he would not press his amendment, particularly in the absence of the Honorable and learned Vice-President. Had the Honorable and learned Vice-President been present, he would have divided upon his Motion.

The amendment was accordingly withdrawn.

An amendment was made in Section 354, on the Motion of Mr. Forbes, which was followed by a new Section similar to Section 275.

Section 378 (relating to the form of verdict in trials by Jury) was omitted as unnecessary, with reference to Section 380 ; and a verbal amendment was made in the latter Section.

MR. FORBES moved the introduction of the following Section after Section 407, and said that the proposed Section was taken from Act IV of 1843, which it was proposed to repeal :—

"Any person convicted and sentenced by any Officer exercising jurisdiction under the Statute 53 George III c. 155, s. 105, or under Act VII of 1853 (to extend the jurisdiction of Magistrates under the 53 George III c. 155, s. 105, in cases of assault, forcible entries, and other injuries accompanied with force not being felonies), may appeal to the Court having jurisdiction at the place at which the appeal would have been heard had the sentence been passed by a Magistrate subordinate to such Court. Cases appealed under this Section shall not be afterwards liable to revision by means of a writ of certiorari. Provided that nothing in this Section shall be held to take away the power of quashing any conviction by means of a writ of certiorari in any other case than when there has been such an appeal as aforesaid."

SIR BARTLE FRERE doubted whether, after the changes which had been made in the Code and particularly after the proviso which had been added to-day to Section 41, as enlarged, on the Motion of the Honorable Member for the North-Western Provinces, the Section proposed by the Honorable Member for Madras was necessary. Under Section 41, as it now stood, only Justices of the Peace could exercise jurisdiction in the cases falling within the Statute and Act mentioned in the Section, and parties dissatisfied with the orders passed by a Justice of the Peace in such cases would have their remedy in a writ of certiorari. Up to the present time Magistrates not Justices of the Peace, had the same jurisdiction as Justices of the Peace in such cases, and the appeal therefore given to the Session Court from the Magistrate's order was quite necessary and proper, but with the change in the law introduced to-day, the necessity had, he thought, ceased, and there was a great risk of a conflict of jurisdiction. He thought it better therefore to confine the right of appeal to the remedy by writ of *certiorari*, which was the appropriate mode of revising decisions of Justices of the Peace.

MR. HARINGTON said if the Honorable Chairman would refer to Act IV of 1843, he would find that it applied as well to Justices of the Peace as to Zillah Magistrates who were not Justices of the Peace, and that precedence was given in the Act to the former Officers. The preamble of the Act said :—

"Whereas in all cases of conviction before Justices of the Peace in the Mofussil and before Magistrates exercising jurisdiction under the provisions of Statute 53, George III c. 155, the law as to appeals requires amendment."

And the enacting Section which followed, declared that an appeal should lie as well from Justices of the Peace as from Magistrates exercising such jurisdiction to the same authority as appeals from Magistrates in Mofussil Courts, that was, to the Court of Session. Before Act IV of 1843 was passed, a European British subject deeming himself aggrieved by an order of a Justice of the Peace or of a Magistrate, had no alternative but to apply to the Supreme Court for a writ of certiorari. The obtaining of such a writ entailed considerable expense upon the party applying for it, and it was thought only just and proper to the European residents in the Mofussil, in order to relieve them from this expense, to give them an appeal to the local authorities. If he recollected rightly, Act IV of 1843 originated in a case which occurred at Mirzapore and which showed the hardship and inconvenience to which European residents in the Mofussil were subjected from their having no other remedy than an application to the Supreme Court for a writ of certiorari. The Honorable Member for Madras proposed to retain the proviso contained in Act IV of 1843, which allowed parties sentenced under the 53 George III, or Act VII of 1853, either to appeal to the local authorities or to apply to the Supreme Court for a writ of certiorari. They could not have both. This seemed quite proper.

MR. FORBES said he wished merely to continue the existing law. Should the Committee not adopt the Section proposed by him as part of the Criminal Procedure Code, Act IV of 1843, which his Section was intended to take the place of, must remain in force.

SIR CHARLES JACKSON concurred with the Honorable Member for the North-Western Provinces and should support the Motion of the Honorable Member for Madras. He would not deprive the European community of any benefit which they now enjoyed. Act IV of 1843 took nothing away from Europeans in the Mofussil, but gave them an additional benefit. Under that Act they had the option of an appeal to the local Courts or of an application to the Supreme Court. They would have the same option under the Section proposed by the Honorable Member for Madras.

The question being put, the Council divided as follows :—

Ayes 6.	*Noes* 1.
Mr. Seton-Karr.	The Chairman.
Sir Charles Jackson.	
Mr. Erskine.	
Mr. Forbes.	
Mr. Harington.	
Sir Robert Napier.	

So the Motion was carried, and the Section was passed after a slight alteration.

Section 408 provided as follows :—

"In all criminal cases in which a Court of Session or the Magistrate of a District or other officer exercising the powers of a Magistrate shall pass a sentence of imprisonment not exceeding one month, or a fine not exceeding fifty rupees, no appeal shall be allowed."

MR. SETON-KARR moved that the word "criminal" be struck out of the first line in this Section. His friend, the Honorable Member for the North-Western Provinces, had truly remarked to him that this Code was a Code of *criminal* procedure, and that consequently the retention of the above word seemed superfluous. The Council might recollect that he (Mr. Seton-Karr) had had the honor of introducing this Section as an amendment. After its introduction, it had been enlarged beyond his original intention, but if he understood the sense of the Council aright, it was intended that *all* sentences within one month's imprisonment or 50 Rupees fine should not be appealable.

SIR BARTLE FRERE asked, to what cases it was contemplated the Section should be applicable.

Mr. SETON-KARR explained that there might be some cases tried by a Magistrate which were not purely *criminal* cases, like assaults and misdemeanors were. Such cases were known as "miscellaneous criminal cases" and might be cases of Act IV, cases of stopping up roads or paths, or of nuisances. For the sake of this distinction the word "criminal" might originally have been introduced. But as he gathered that the wish of the Council was to put an end to all appeals in all cases within that limit, or where not allowed by any Section of this law, or by any local or special law for the time being in force, he should wish to see the word "criminal" struck out altogether.

The Motion was carried, and the Section as amended then passed.

An amendment was made in Section 410, on the Motion of Mr. Erskine, by which the time within which petitions of appeal to the Sudder Court must be presented under that Section was altered from six weeks to sixty days, so as to conform to Section 412.

MR. HARINGTON moved the introduction of the following new Section after Section 416 :—

"The sentence or order of the Sudder Court modifying, amending, or reversing the sentence or order of a Lower Court on appeal or revision, shall be signed by at least two Judges of such Sudder Court."

Agreed to.

A verbal amendment was made in Section 438 on the Motion of Mr. Erskine.

Section 439 provided as follows :—

"The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of that Court and of all Criminal Courts subordinate to it and also to frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it shall think necessary that a form should be provided, and for keeping all books, entries, and accounts to be kept in such Courts and from time to time to alter any such rule or form, provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force."

MR. HARINGTON moved the omission of the word "and" after the word "provided" in line 10, and the insertion of the following words after the word "Courts" in line 11 :—

"and for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts."

Agreed to.

MR. SETON-KARR moved the insertion of the following words at the close of the above Section :—

"Any rules framed by the Court under this Section shall be published in the official Gazette."

The Council would recollect that a similar provision had been introduced into the Code of Civil Procedure, and as it was even more important that all subordinate officers should be made acquainted with the rules in the Criminal Department, he thought the provision a proper one.

The Motion was carried, and the Section as amended then passed.

An amendment was made in Section 441, on the Motion of Mr. Harington, providing for the commencement of the Act from the 1st January 1862.

Form A ran as follows:—

To A. B. of

Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged). You are hereby required to appear in person before the [Magistrate] of on the day of therein

(Signature and Seal)

Dated the day of

MR. SETON-KARR moved the insertion of the words "or by authorised agent as the case may be" in brackets after the words "in person." The Council would recollect that a somewhat protracted discussion took place as to the propriety of allowing an appeal in cases where a Magistrate required the personal attendance of a zemindar or native of high position to answer for certain offences. That discussion terminated unfavorably to his (Mr. Seton-Karr's) Motion, and he had no intention of re-opening it. But he did not understand that Magistrates might not use their discretion in allowing such persons to appear by their authorized agent, if they thought fit, and in this view the words were necessary.

Agreed to.

MR. HARINGTON moved that the last part of the 4th note in the Schedule be transposed so as to stand as a separate note numbered 7.

Agreed to.

MR. ERSKINE moved that the Clerk of the Council be authorized to correct the 6th column of the Schedule so as to show the character of the imprisonment awardable in each case.

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be read a third time and passed.

After some discussion, the Motion was by leave withdrawn, and the third reading of the Bill postponed till Saturday next.

CIVIL PROCEDURE.

The Order of the Day being read for the third reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)"—

MR. HARINGTON moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering certain proposed amendments therein.

Agreed to.

MR. HARINGTON moved the introduction of the following new Section after Section 3:—

"If in any suit there are more defendants than one, and at the date of the institution of the suit all the defendants shall not reside within the jurisdiction of the Court in which the suit is brought, but one or more of the defendants shall reside within such jurisdiction, the suit shall not be rejected by reason of all the defendants not residing within the jurisdiction of the Court in which the suit is brought, but the District Court, if the suit is pending in any Court subordinate to such Court, or the Sudder Court, may order that the suit be heard in any Court subordinate to such Sudder or District Court, and competent in respect of the value of the suit to try the same."

After some discussion, the Section was agreed to.

Sections 5 and 6 were transposed after some necessary verbal amendments in the former Section.

MR. HARINGTON moved the omission of Sections 15 and 16 and the substitution of the following new Sections, the wording of which corresponded exactly with that of the provisions on the same subject in the new Code of Criminal Procedure:—

"15. When in any case pending before any Court any witness or other person shall

appear to the Court to have been guilty of an offence described in Section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, or 210, of the Indian Penal Code, the Court may commit such person to take his trial for the offence before the Court of Session, or, after making such preliminary enquiry as may be necessary, may send the case for investigation to any Magistrate having jurisdiction to try or commit for trial the accused person for the offence charged, and such Magistrate shall thereupon proceed according to law.

15*a*. The Court may send the person accused in custody or take sufficient bail for his appearance before the Magistrate, and may bind over any person to appear and give evidence before the Magistrate.

15*b*. When the commitment is made by the Court, the Court shall frame a charge in the manner provided in Chapter XIII of the Code of Criminal Procedure and shall transmit the same with the order of commitment and the record of the case to the Magistrate, and such Magistrate shall bring the case, together with the witnesses for the prosecution and defence, before the Court of Session.

15*c*. When in any case pending before any Court there shall appear to the Court sufficient ground for sending for investigation to the Magistrate, a charge described in Section 463, 471, 475, or 476, of the Indian Penal Code, which may be preferred in respect to any deed or paper offered in evidence in the case, the Court may send the person accused in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate. The Court shall send to the Magistrate the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such Magistrate. The Magistrate shall receive such charge and proceed with it under the rules for the time being in force.

15*d*. If the person accused, or any one of the persons accused in any case falling under Section 15 or Section 15c of this Act, is a European British subject, the Court shall send such person in custody or take sufficient bail for his appearance before an Officer empowered to commit or hold to bail persons charged with offences for trial before a Supreme Court of Judicature, and such Officer shall proceed according to law.

15*e*. When any such offence as is described in Section 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view of presence of any Court, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding 200 Rupees, or by imprisonment in the civil jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding 200 Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or, if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate, and it shall be competent to such Magistrate to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall enquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the Statute 53 George III c. 155, s. 105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.

15*f*. When any person has been sentenced to punishment under the last preceding Section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment, on the submission of the offender to the order or requisition of such Court."

Agreed to.

An amendment was made in Section 34, on the Motion of Mr. Harington, empowering the Sudder Court to prescribe forms for the preparation and submission of any Statements to be prepared and submitted by the Courts subordinate to it.

Mr. HARINGTON moved the introduction of the following Sections before Section 35 :—

"Act VIII of 1859 shall be called the Code of Civil Procedure."

"Sections 15a, 15b, 15c, 15d, 15e, and 15f of this Act shall not take effect until the date on which the Indian Penal Code and the Code of Criminal Procedure shall come into operation."

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ARTICLES OF WAR (NATIVE ARMY).

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I (the repealing Clause) was passed after the insertion of the 1st January 1862 as the date of repeal of the existing laws, and after the inclusion of Act VIII of 1844 among the Acts to be repealed, besides a slight amendment at the end of the Section.

Section II was passed after a verbal amendment, and the addition of the following words (on the Motion of Mr. Harington):—

"and every such trial shall proceed and be completed in the same manner as if this Act had not been passed."

Articles 1 and 2 were passed after verbal amendments.

The first two Clauses of Article 3 were passed after verbal amendments, and the proviso at the end of the Article was transposed so as to stand before the third Clause.

The third Clause of the Article provided as follows:—

"All Non-Commissioned Officers and Soldiers discharged the service, shall be furnished by the Commanding Officer of the Regiment with a discharge Certificate, made out in the Vernacular language of the individual discharged, with an English translation, expressing the authority for, and cause of, such discharge, and the period of his entire service in the Army."

MR. HARINGTON moved that the first part of the Clause be amended so as to run as follows:—

"Every Non-Commissioned Officer or Soldier discharged the service, shall be furnished by the Commanding Officer of the Regiment to which he belongs, with a discharge Certificate, &c."

MR. ERSKINE said, he thought the Council should come to a decision, as to the manner in which they were to deal with these Articles,—that is to say, whether the object was to assimilate even their diction and phraseology to the language used in ordinary laws?—or whether the Council would agree to confine their amendments to more material points, such as, removing obvious inconsistencies embodying in the Articles the substance of some short laws which were to be repealed, and providing for the few important amendments which had been recommended by the Military Authorities? He was as sensible as any one could be that the Rules they were asked in this way to enact, might be much improved, in respect to style and arrangement, and in other respects. But he felt also that those Regulations had been in use for sixteen or seventeen years, that they had been prepared by Officers of great experience, and that the different Chiefs of the Departments of Military Administration throughout India had recently reported their opinions that the Articles, as amended by the Government, might advantageously be re-enacted with but a few alterations. He would act upon those reports. He would give legal force to the Articles in the form in which they were familiar to, and approved by, the Military Authorities. If this should lead to the passing of an Act containing Military Regulations not worded as correctly, or framed with as much precision, as the ordinary Acts of the Council, and if it should thence appear evidently that the Articles themselves were but the stepchildren of the Council, he thought that would not be a great misfortune. He should therefore vote against mere verbal amendments.

SIR CHARLES JACKSON said that the question involved in the amendment of the Honorable Member for the North-Western Provinces was only one of grammar, and he should vote in support of it. If the amendment had altered the Bill in substance, he should

have hesitated, and should have been guided to a great degree by the opinion of the Honorable General opposite, for he must confess his ignorance of Military matters. But he thought the Council were bound to see that the language used was grammatical and intelligible. As the Bill was not intended to be passed before next Saturday, the Military Authorities would have an opportunity, before the Bill was read a third time, of considering whether the amendments which might be made in it to-day were proper or not.

SIR ROBERT NAPIER said that he should certainly not object to any verbal amendments, but that the substance of the Code should not be altered as it had been drawn up by the late Judge Advocate General whom the Honorable and learned Judge had recently pronounced the best Military lawyer he had ever known.

SIR BARTLE FRERE said, he agreed in opinion with the Honorable Member for Bombay. He admitted that there was much in the proposed Articles which was open to improvement, both as regarded style and arrangement. But if the Committee were once to begin to put the Bill in a proper legal and philosophical shape, they must recast the Bill entirely. He thought it was understood that no amendment should be made which was not absolutely necessary, or which involved an alteration in the sense and meaning of the Articles as they now stood. He must therefore vote against the proposed amendment.

MR. HARINGTON said, he really did not think that this Council should be called upon to pass this Bill as it now stood. It would be discreditable to the Council to pass the Bill in its present state. The singular and plural numbers were confounded in the most extraordinary manner and the wording of some of the Sections was open to other objections. They were told that the Articles in their present form had hitherto been found quite intelligible. That might be, and so were many other ungrammatical productions—such, for instance, as letters constantly received from Natives; but that was surely no reason why the Council, having been called upon to revise the Articles, should not put them into correct language.

MR. SETON-KARR said that he had no intention of making any attack on the parts of speech of any of the Military Authorities, and he entirely agreed in the remarks of the Honorable Chairman as to the necessity for not making any alterations not absolutely indispensable, and as to respecting the substance of the Sections. But, when he saw a grammatical construction really faulty, and when he considered that the singular number and not the plural was used in most other parts of the Bill, he thought that the proposed amendment would merely amend the form without touching the substance, and as such, he should support it.

The Motion was put and carried, and the Article as amended, then passed.

Article 4 provided as follows:—

"No Non-Commissioned Officer or Soldier shall enlist himself in any other Regiment without a regular discharge from his former Regiment, under the penalty of being reputed a deserter, and suffering accordingly."

MR. HARINGTON moved the omission of the above Article, and the substitution of the following:—

"No Non-Commissioned Officer or Soldier shall enlist himself in any other Regiment or Corps until he has been discharged from the Regiment or Corps to which he belongs; and any Non-Commissioned Officer or Soldier so enlisting, shall be reputed a deserter, and shall suffer punishment accordingly."

SIR BARTLE FRERE said, he would repeat that there were very few of the Articles which were not open to much verbal criticism, and he objected entirely to mere verbal amendments which were not necessary to make the sense clear, or to alter the sense. In the event of the present amendment being carried, he must withdraw the Bill in its present shape, or at least adjourn the Committee with a view to considering the further steps he should take with regard to it.

The question being put, the Council divided as follows :—

Ayes 3.	*Noes* 4.
Sir Charles Jackson,	Mr. Seton-Karr.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Sir Robert Napier.
	The Chairman.

So the Motion was negatived.

MR. HARINGTON then moved the omission of the words "his former Regiment," and the substitution of the words "the Regiment to which he belongs."

The question being put, the Council divided :—

Ayes 5.	*Noes* 2.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	The Chairman.
Mr. Forbes.	
Mr. Harington.	
Sir Robert Napier.	

So the Motion was carried.

MR. HARINGTON moved the insertion of the word "punishment" after the word "suffering."

The question being put, the Council divided :—

Ayes 4.	*Noes* 3.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Sir Robert Napier.
Mr. Forbes.	The Chairman.
Mr. Harington.	

So the Motion was carried, and the Article as amended, was then psssed.

SIR BARTLE FRERE said that, as the Honorable Member seemed determined not to let the Bill pass as it now stood, he proposed to adjourn the Committee. The Bill had been framed upon the old Articles of War (Act No. XIX of 1857), and followed the same phraseology. No complaints had hitherto been made of the inaccuracies of expression to which exception had now been taken. On the contrary, the Articles were well understood, and, in fact, were quite familiar to the Officers and men of the Army. He had already admitted that almost every Article in the Bill was open to verbal criticism, and he must say that, if the Council were determined not to let the Bill pass with those inaccuracies, the best course would be for the Bill to be wi hdrawn on its present shape with a view to its being recast. He should therefore move the adjournment of the Committee.

MR. HARINGTON said, he wished to say a few words in regard to the word *determined* as applied to him by the Honorable Chairman. His copy of the Bill, which he would be happy to show to the Honorable Chairman, would show that the amendments which he had still to propose were very few in number. The Committee were quite ready to proceed with the Bill, and were anxious to do their best to put it into such a shape as not to reflect discredit on the Council. As the majority of his amendments had been carried, he did not think he was open to the charge of proposing unnecessary alterations in the Bill. The Honorable Chairman could not reasonably expect the Council to pass a Bill so inaccurately worded. He (Mr. Harington) simply wished the Articles to be framed in proper and intelligible language, and not to make any change in the substance of the Articles.

SIR BARTLE FRERE said, the Committee by their first division had decided that they would not go into merely verbal questions. Yet the Honorable Member for the North-Western Provinces had gone on putting verbal amendments, and the Committee seemed inclined to agree with him. The Bill had been printed for a very long period now. It was reported upon by the Select Committee in May last ; and except some amendments which had been prepared by the Honorable Member for Bombay, and which he (Sir Bartle Frere) had caused to be printed and circulated, no notice of amendments had been given by any Honorable Member ; and if the Honorable Member for the North-Western Provinces would look back, he would find that they had passed a good deal which was quite as much open to verbal objection as the Article now under consideration. If the Council were determined to eliminate every inaccuracy, it would be necessary to recast the whole Bill.

MR. HARINGTON said that, as the amendments which he proposed to move were merely verbal, he had not considered it necessary to print and circulate notice of them.

SIR CHARLES JACKSON said, he was rather disappointed that the Bill should now be withdrawn after the little opposition it had received. With the exception of some grammatical errors, he did not think that there was any Honorable Member who intended to offer any opposition to it; and in making the amendments which had been adopted, the Committee had been simply applying their best attention and consideration to the Bill.

MR. SETON-KARR said, he would merely observe that he thought one expression which had fallen from the Chairman inapplicable, and that was, the expression "to recast the Bill." No change of substance in the Articles nor any violent change of form, seemed to him to be necessary, such as would warrant the term "recast." For his part he was quite prepared to offer no obstructions to the Government and to go on with the Bill without exercising any interference beyond a support of any amendments requisite to remove from the Bill grammatical errors or palpable errors of expression that seemed to start out from the very face of the Sections; and with this view he should be very sorry to see the Bill withdrawn by the Chairman under the notion that needless opposition was likely to be offered.

SIR ROBERT NAPIER said, he had accepted the Bill as containing the words which had for a long time been used in the Articles of War. But since objections had been made to the phraseology of the Bill, he thought that the course proposed by the Honorable Chairman, of withdrawing the Bill with a view to its being recast, the best that could under the circumstances be adopted.

SIR CHARLES JACKSON said that all he wished to observe was that, if the Bill were withdrawn, it should be perfectly understood that it was withdrawn at the instance of the Government, and that the Government were solely responsible for such a step. This Council had gone to work fairly, and were anxious to proceed with the Bill, and felt quite equal to dealing with it.

Sir Charles Jackson

SIR BARTLE FRERE said, he was quite convinced of that fact. But there was no single Article which would not be open to the same objections as had already been taken; and as the Bill had now taken more than a year and a half in its preparation, he was not aware of any ill result likely to follow from its being delayed a little longer. He should therefore press his Motion.

The Motion was carried; and the Council resumed its sitting.

FLOGGING.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to provide for the punishment of flogging in certain cases;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

After some conversation, the Motion was by leave postponed till Saturday next.

CIVIL PROCEDURE.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" to the Governor-General for his assent.

Agreed to.

NOTICES OF MOTION.

MR. HARINGTON gave notice that he would on Saturday next move the first reading of a Bill to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties); the second reading of the Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure"; and the third reading of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

SIR BARTLE FRERE said, he proposed on Saturday next to bring in a short Bill to enable the Bank of Bengal to carry out any arrangements which might be necessary to give effect to the Paper Currency. The Bank's

Charter Act would require to be remodelled and revised ; but this would take time, and the arrangement now proposed could be made under the Bank's present Charter Act with some modifications. The Bill had been lately put into his hands, but he proposed to have it printed and circulated to the Members, and to furnish copies of it to the Directors of the Bank and others early next week ; and he hoped that there would be no objection to a suspension of the Standing Orders with a view to the Bill passing through all its stages on Saturday next.

MR. SETON-KARR gave notice that he would on Saturday next move the second reading of the Bill " for the registration of Nijjote and Khamar lands as well as of Ryotty tenures involving the immediate occupation of the soil for the purposes of cultivation or for other purposes."

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that the Bill " to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army" be referred back to a Select Committee consisting of Mr. Harington, Mr. Forbes, and Mr. Erskine, with an instruction to propose any amendments which they might consider necessary before the Bill was again brought before the Committee of the whole Council.

Agreed to.

The Council adjourned.

Saturday, August 31, 1861.

PRESENT :

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, Presiding.

Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.
C. J. Erskine, Esq.,	

CIVIL PROCEDURE.

THE PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill " to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from Mr. Singer, attorney for Mahomed Kadir Ali of Lucknow, praying for a definition of the meaning of Section XV Act XIV of 1859, as regards gold mohurs and rupees.

CIVIL PROCEDURE.

THE CLERK also presented a Petition from Moung Tom of Akyab, praying that a course of procedure for causes for matrimonial rights and for divorce be introduced into the Bill to amend Act VIII of 1859 (the Code of Civil Procedure.)

MR. SETON-KARR moved that the above Petition be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARINGTON presented the Report of the Select Committee on the Bill " to make certain amendments in the Articles of War for the Government of the native officers and soldiers in Her Majesty's Indian Army."

SALTPETRE.

MR. HARINGTON presented the Report of the Select Committee on the Bill " to regulate the manufacture of Saltpetre and of Salt educed therefrom."

BANKS.

SIR BARTLE FRERE moved the first reading of a Bill " to enable the Banks of Bengal, Madras, and Bombay, to enter into arrangements with the Government for managing the issue, payment, and exchange of Government Currency Notes, and certain business hitherto transacted by the Government Treasuries." In doing so,

he said it was not necessary that he should enter into any details, as the objects were fully stated in the annexure to the Bill which had been for some days in the hands of Honorable Members. It was there explained that the Charter Acts under which the Banks of Bengal, Madras, and Bombay acted, did not permit those Banks to take advantage of the power which was given by the Currency Act to Government to enable them to carry out the designs of that enactment. Pending the enactment, therefore, of a fresh Charter Act, this Bill was prepared in order to enable the Banks to undertake the management of the business connected with the Currency scheme. He would not detain the Council farther than to state that, after the Bill was read a first time, it was his intention to move that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day.

The Bill was read a first time.

SIR BARTLE FRERE moved that the Standing Orders be suspended.

SIR ROBERT NAPIER seconded the Motion.

SIR CHARLES JACKSON asked, if the Bill had been laid before, or drawn by, Counsel.

SIR BARTLE FRERE replied that the Bill had been laid before the Advocate General, and drawn in accordance with his opinion.

The Motion was then put and carried.

SIR BARTLE FRERE moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee after a verbal amendment, and, the Council having resumed its sitting, was reported.

SIR BARTLE FRERE moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

Sir Bartle Frere

STAMP DUTIES.

MR. HARINGTON moved the first reading of a Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties.)" He said, objections having been taken in various quarters to some of the provisions and Articles of the present Stamp law, and an amendment of that law being deemed necessary, the Government of India lately appointed a Committee, consisting of the Honorable Member for Bengal, Mr. Fitzwilliam, the highly respected and intelligent President of the Chamber of Commerce at Calcutta, and himself, to consider the matter and to propose such modifications of the existing law as the Committee so appointed might consider advisable. The result was the Bill to the first reading of which he had now to ask the assent of the Council. The Bill did not profess to embrace a general revision of the Stamp Acts of 1860, but was confined to such alterations in those Acts as appeared to be of sufficient importance and urgency to call for immediate legislation. The proposed alterations were not very numerous, though some of them would be found to be of considerable importance. Looking at the quantity of business before the Council to-day, as shown by the Orders of the Day, he would not occupy the time of the Council by going in detail through all the proposed alterations in the existing law, or by entering into a lengthened explanation of the grounds on which they were recommended for adoption. He hoped that the Bill would be printed, and that copies would be in the hands of Honorable Members in the early part of next week, and he believed that, as regarded most of the alterations proposed, they would be found to explain themselves. Under these circumstances, he would content himself with remarking at this time, that the most important amendments proposed in the existing law, were introduced and intended for the relief of the mercantile community and those engaged in the production and delivery of articles of

commerce, and with noticing only a few of the more important amendments Under the existing law, letters of cover or memoranda of Insurance which generally preceded the execution of policies of Marine Insurance, and letters of hypothecation which accompanied document Bills of Exchange, were held to be chargeable with the same amount of Stamp Duty, letters of cover, as policies of Insurance, and letters of hypothecation, as deeds of mortgage. This double charge of Stamp Duty, as it might be called, was complained of, and he thought not without reason, as excessive. It was proposed that both instruments or letters should be charged with a uniform rate of one anna. Engagements to cultivate, produce, and deliver articles of commerce were chargeable under the existing law at the same rate as bonds. This had had the effect of doubling the amount of Stamp Duty to which the contracts entered into by the smallest classes of ryots and others, when parties to such engagements, were liable under former enactments, and the higher duty pressed very heavily upon these classes. A considerable reduction was proposed in respect of all such engagements when the amount advanced did not exceed 200 Rupees. Then the provisions of the present law, which related to the delivery or taking or receiving of Foreign Bills of Exchange drawn in sets, were considered too stringent, and some relaxation of them was deemed just. He might also mention that a most important alteration was proposd in the 1st Article of Schedule A in the part which related to loans made by bankers for short periods. Under the Clause of the Article, as it now stood, it was only when the loan was made upon the deposit of notes or other securities of the Government of India, that the comparatively light duty of two or four Rupees was chargeable. In all other cases the same Stamp was required as for a bond. It was proposed to extend the Clause of the Article so as to embrace loans on Railway Scrip, shares in Joint Stock Companies, warrants for goods deposited in Bonded or other warehouses and assignments of produce or other goods. This would be a great advantage to the banks generally. The option of using to a greater extent than was now allowed, adhesive instead of fixed Stamps, had been asked for, and the Bill contained a provision on the point, which he hoped would sufficiently meet the requirement. It was proposed to give a discretionary power to the Governor-General of India in Council, to authorize the use of adhesive Stamps where not now allowed, and he thought that the public might be assured that, in the exercise of this discretion, the Government of India would be found prepared to consult the convenience of the public to as great an extent as was consistent with the security of the public revenue.

The Bill also contemplated an increase in the amount of the public revenue derived from the sale of Stamps, by requiring that certain deeds, instruments, and writings, which were not now chargeable with Stamp Duty, should not henceforth be exempted. The amount of Stamp Duty proposed to be charged on such deeds would be found to be generally light, and he ventured to hope that the Council would agree with him that the deeds, instruments, and writings, which it was now intended to bring under the operation of the Stamp laws, were all legitimate and proper subjects of taxation in the manner proposed, and that no sufficient reason existed for their enjoying immunity any longer. Under this head were included certificates for the collection of debts on succession granted by the Civil Courts under Act XXVII of 1860, and applications to the Collectors of Customs at the Presidency Towns, on which it was proposed to charge a small uniform rate of one anna. It was also proposed that receipts for money or other deeds, instruments, or writings executed to Government or to any officer of Government, should be placed on the same footing as receipts, deeds, &c., executed to private individuals. There seemed no reason for the distinction which at present existed. The only other proposed alteration which he

would particularly notice, was in the Article of Schedule A which related to Bills of Exchange payable on demand. It was proposed to do away with the half anna stamp and to charge a uniform rate of one anna on all such Bills for sums exceeding ten rupees. Bills of Exchange for sums not exceeding ten rupees payable on demand would be exempted. At present there was no exemption. This latter alteration in the existing law was proposed in consequence of a representation from the Manager of the People's Bank. It was believed that the proposed exemption would prove a great benefit and convenience to large classes of the community, and it was hoped that any loss to Government consequent thereon would be more than met by the uniform rate of one anna proposed for cheques of a larger amount than ten rupees.

The alterations in the existing law, by which the mercantile community and the other classes referred to would chiefly benefit, were proposed for the most part by Mr. Fitzwilliam to whom he considered that the Committee and the Government, and he thought he might add the public at large, were greatly indebted for the valuable assistance which he had rendered in the preparation of this Bill. Much valuable information and advice and some very useful suggestions had also been received from Mr. Dunlop, the able Manager of the Agra and United Service Bank, and he gladly availed himself of the present opporunity of publicly acknowledging his obligations to that gentleman. He would now move that the Bill be read a first time.

The Bill was read a first time.

LIMITATION OF SUITS.

SIR CHARLES JACKSON said that, in consequence of the absence of the Honorable and learned Chief Justice, he begged at his desire to postpone the second reading of the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)" until Saturday next.

Agreed to.

REPEAL OF REGULATIONS AND ACTS.

MR. HARINGTON moved the second reading of the Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure."

The Motion was carried, and the Bill read a second time.

ZEMINDARY DAWKS (BENGAL).

MR. SETON-KARR moved the second reading of the Bill "to improve the system of Zemindary Dawks in the Provinces subject to the Government of Bengal."

MR. HARINGTON said, it was his intention to vote for the second reading of this Bill unless, in the course of the debate which might ensue upon the present Motion, he should hear any reason which should lead him to think that he would be acting wrongly in so doing. He approved of the object of the Bill, and he quite concurred in what had fallen, if he recollected rightly, from the Honorable Member who had brought in the Bill, to the effect that it was desirable that that which they had been told had been done by the Magistrates of some districts in the direction of this Bill without any authority of law, should for the future be brought under regulation and rule, or, in other words, under legislative enactment. Leaving matters of this kind to the exercise of individual discretion was seldom free from danger and mischief, and hardship or mischief often ensued. He found it stated in a letter from the British Indian Association which formed one of the annexures of the present Bill, in reference to what they had been told had been done by some Magistrates, that "although the Committee of the British Indian Association believed the alteration had not been wholly unattended with advantage, they have heard of exorbitant demands by the Magistrates in certain cases" But though willing to allow the Bill to be read a second time to-day and published for general information, he thought it right to mention that, if it should hereafter be made to appear

that the Bill involved a contravention of the terms of the famous permanent settlement of Bengal, he should consider himself at full liberty to vote against the third reading of the Bill—the vote he intended to give to-day notwithstanding.

In the letter from the British Indian Association to which he had already referred, the Association in paragraph 3 said :—

"They are, however, firmly persuaded that if the co-operation of the zemindars with the Magistrates in the distribution and disbursement of the funds, so much desired by the district authorities and the Lieutenant-Governor, were secured, with due regard to the legal position and liabilities of the former, (that is, of the Zemindars) the result would certainly be of the most desirable description."

Further on in paragraph 6 they said :

"The Committee are aware that in many places Government Dawks have been established for the purpose of general communication, and they think that in such places the Zemindary Dawks may be discontinued without detriment to the Public Service in justice to and to the great relief of the landholders and Public Officers. Indeed in such cases the Zemindary Dawks are superfluous, a source of unnecessary expense to the Zemindars, and are manifestly opposed to the terms of the law."

And in paragraph 7 :—

"The Committee, however sincerely trust that whatever changes may be proposed in the law, with a view to give effect to the above plan, the rates may be so levied as not to form an addition or subsidiary to the Sudder jumma. The amount may be collected separately, and in such manner as may not in any way affect or contravene the integrity of the permanent settlement. This is a point on which the Committee feel the Zemindars will lay considerable stress, and they trust its importance will not be over-looked by His Honor."

The extracts which he had read from the letter of the Association, showed how wary they were in writing on the point, and how careful not to commit themselves. Looking at this Bill in the light of the very able Minute recorded some years ago by the Honorable and learned Vice-President of this Council as a Member of the Supreme Government, when it was proposed to put a light tax upon the Zemindars of Bengal for improving the Chowkeedaree or village Police, he (Mr. Harington) did not think it at all clear that the present Bill was not open to the same objection as the impost just mentioned. The Income Tax Act of last year which applied to the Zemindars of Bengal equally with all other classes, might be quoted as a precedent in support of the present Bill ; but it must be remembered that the extension of that Act to the Zemindars of Bengal was defended entirely on the ground that it imposed not a local or a partial law, but a general law for the whole country and for all classes. This was clearly not the character of the present Bill, and he was disposed to think that it rather belonged to the same category as the measure formerly objected to by the Honorable and learned Vice-President. He (Mr. Harington) hoped that the Zemindars of Bengal, looking to the object of the Bill and to the benefits which it might possibly confer upon them, would waive all objections and cordially accept the Bill. He would not say more on this subject at present. It had appeared to him that he could not properly support the Bill by allowing it to be read a second time without making some allusion to what might hereafter be brought forward as a very serious, and it might be, an insurmountable objection to the Bill.

MR. SETON-KARR said that, if the Honorable Member for the North-Western-Provinces or any other gentleman could persuade him that the principle of the Bill was likely to contravene or impugn any of the fundamental principles of the Perpetual Settlement, he would be the first person to withdraw it. But he had been very careful to avoid this, and he believed that the fears expressed by the British Indian Association arose in this way. Some energetic and impulsive Magistrates had recommended that quotas or fines imposed for the purposes of these Zemindary Dawks should be realised in the same way as arrears of revenue; that is, that the amount should be simply tacked on to the Sudder jumma, and the estate be sold

off in default of payment. Now he had guarded against this by providing that the method laid down in Regulation XX of 1817 should not be departed from, and that dues and fines should be leviable by distraint and sale, and in default of property, should be commutable to one month's imprisonment. He had also altered the wording of Section 1, and for the words "are repealed" had introduced the words "shall cease to have effect in the Provinces subject to the Government of Bengal." He might state, too, that it would be in the power of the Executive Government to abolish Zemindary Dâwks as superfluous on lines where there was already a Government Dawk. It was quite unnecessary to keep up a double set of Dawks on one and the same line. As regards the views, dated the year 1856, of the learned Vice-President whose absence he regretted, they were actually laid before the Lieutenant Governor and before the Government of India when it lately gave its assent to the main principles of this Bill. Any other question of detail could be considered in Committee, and he was quite content that, as the Bill was to apply only where the Permanent Settlement was in force, the principle of the Bill should stand or fall by the terms of that great Settlement.

The Motion was then put and carried, and the Bill read a second time.

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

MR. SETON-KARR moved the second reading of the Bill "for the registration of Nij-jote and Khamar and other such lands as well as of Ryottee tenures involving the immediate occupation of the soil for the purposes of cultivation, or for other purposes."

Mr. HARINGTON said, before addressing himself to the merits of this Bill, he wished to make a suggestion to the Honorable Member who had charge of the Bill, which he hoped that the Honorable Member would adopt. If the suggestion which he had to make were adopted, it would be unnecessary for them to proceed further with the Bill. It was a matter not of conjecture only, but of fact, that in a very brief period this Council, as at present constituted, would cease to exist. How brief the period might be, it was impossible to say. But this he thought was very certain that this Council, as now constituted, would not last long enough to carry the Bill through its several stages. The Bill was a very important one. It was a Bill which deserved much consideration, and it could not possibly be hurried through the Council. If the Bill were read a second time to-day, it must be published under the Standing Orders for eight weeks. It must then be considered by a Select Committee, and afterwards by a Committee of the whole Council. He repeated, therefore, that there seemed no probability of this Council, as at present constituted, lasting a sufficient length of time to carry the Bill through all its stages. The Bill, which would abolish this Council, as now constituted, would give the Governor-General of India in Council power to establish local Legislatures, and though he had no authority for saying so, he took it for granted that, contemporaneously with the establishment of what he might call the Imperial Legislative Council, a local Legislative Council would be created for the Lower Provinces of Bengal. The object of the establishment of local Legislatures was to provide a better means for legislating for local matters, or for making local laws, and that was obviously the character of the present Bill. It was clearly a local Bill. A Bill more entirely local in its character could scarcely be framed, and that being its character, it could be better dealt with by a local Legislature than by a Council constituted as this Council was. The great difficulty which he felt in dealing with the present Bill arose from his want of information on the subject to which the Bill related. An intimate acquaintance with the peculiar tenures of Bengal—of the numerous, and, as he might call them, strange and complicated tenures which were to be found in some of the districts—was absolutely necessary to ascertain

the bearing of the Bill, what would be its effects, and how it would work. On these points he was obliged to confess that he was extremely ignorant. He did not wish to speak disparagingly of the knowledge of other Honorable Members; but he thought it probable that with exception to the Honorable Member for Bengal, his want of information was shared in, more or less, by every Honorable Member present. The Legislative Council which, as he had said, would probably be established in a short time for Bengal would not labor under the same serious disadvantage. That Council would doubtless be composed of gentlemen, European and Native, quite familiar with the subject of the Bengal tenures, with the character of the country, and with other matters, a knowledge of which was necessary to a right understanding and for the consideration of this Bill. Some of these gentlemen would have passed the whole of their official lives in Bengal, and others might have a personal interest in the Bill. He thought that a Council so constituted would be much better qualified to deal with a Bill of this nature than this Council constituted as it was at present, and the suggestion which he had to make to the Honorable Member for Bengal was that he should withdraw the Bill and leave the Honorable the Lieutenant-Governor of Bengal to cause it to be introduced as one of the first Bills to be brought into that local Legislature over which there could be no doubt he would most ably preside. The Honorable Member for Bengal would probably think that it would not be courteous or respectful to the Honorable the Lieutenant-Governor of Bengal to adopt the course which had just been suggested without a previous reference to the Honorable the Lieutenant-Governor. He (Mr. Harington) felt that it would be quite proper that such previous reference should be made, and he hoped that the Honorable Member for Bengal would undertake to communicate on the subject with the Honorable the Lieutenant-Governor of Bengal, and to inform him of the suggestion which he (Mr. Harington) had made and of the reasons of it. It might be said that, on the establishment of a separate Legislative Council for Bengal, this Bill could be transferred to that Council. But he did not think that it would be fair to the local Council that the Bill should be sent to it with the principle of it, as it were, already affirmed by reason of the Bill having been read a second time in this Council, and that, too, in the absence of the Honorable and learned Vice-President, and when they had only just a quorum. It seemed to him that, if the local Council were called upon to deal with the Bill at all, they should have power over it from its commencement or first introduction. The same remarks applied equally to the Council which would take the place of this Council. It was impossible to say how that Council would be constituted, and if the present Bill were referred to it, the same want of information might be felt which constituted so great a difficulty in dealing with the Bill at the present time. If, however, the Honorable Member for Bengal should not think it right to adopt the suggestion which he (Mr. Harington) had made, he should be very glad if the Honorable Member would allow the Motion for the second reading of the Bill to lie over until Saturday next. He felt that he must almost have exhausted the patience of the Honorable Member, and he took this opportunity of expressing his obligations to the Honorable Member for the kindness and courtesy which he had shown in not bringing on his Motion for the second reading of the Bill on an earlier date. He (Mr. Harington) believed that it was entirely out of consideration for him, that the Honorable Member for Bengal had not put down the Bill for a second reading on Saturday last. He had hoped that during the present week he should have been able to command a little time which he might have devoted to a more careful consideration of the Bill than it had previously been in his power to give to it; but the revision of the Bill relating to the Articles of War had been very unexpectedly thrown upon him in conjunction with other Members. This was a

very long Bill and the revision had occupied two entire days. Other more pressing work had also required his attention, and the consequence was that he had been unable to give that amount of attention to the Bill which he could have wished, and to seek for the information which he required to enable him to decide what course he ought to pursue in respect to the Bill. This was his reason for asking for the postponement of the Motion for the second reading of the Bill for another week.

MR. ERSKINE said, he had come down to the Council that morning without any intention of opposing the second reading of this Bill. On the contrary, he was willing that it should be read a second time, in order that it might be published as usual for the information of all who were interested in its provisions. But he had just learned from the Honorable Member for Bengal that, if the Bill were now read a second time, it was his intention to pass it through all its stages, if possible, under a suspension of the Standing Orders. That was a proposal which he (Mr. Erskine) was by no means prepared to support. The Bill was one of much importance. The questions involved in it called for careful study. Like the Honorable Member for the North-Western Provinces, he had been prevented by the great press of work recently thrown on Honorable Members, from giving as full consideration as he wished to give to the different provisions of the Bill and their probable effects. His own present impression certainly was that there was a good deal in those provisions, the expediency of which must at least be regarded as very questionable. At the same time, since the Bill had been introduced to the Council with the approval both of the Lieutenant-Governor of Bengal and of the Supreme Government, he (Mr. Erskine) was very unwilling to oppose its progress on the strength of any opinions formed without full deliberation or without giving a clear account of the reasons which obliged him to dissent. This—if found to be necessary—might be done with better effect when the Bill had been published, and when the opinions of those personally concerned in it had been elicited. He had no wish therefore to oppose the second reading. But he must repeat that he should not thereby hold himself pledged in any way to support any proposal for passing the Bill through all its stages under a suspension of the Standing Orders, or even to any of the provisions of the Bill as now drawn.

SIR BARTLE FRERE said, he was not aware that it was the intention of the Honorable Member for Bengal to do more than ask the Council to affirm the principle of the Bill to-day. If, however, the Honorable Member did intend to do more than that, he (Sir Bartle Frere) must say that he agreed with the Honorable Member for the North-Western Provinces in objecting to such a course, though not on the grounds put forward by that Honorable Member, because we were not bound to look forward to the future possible status of this Council. He thought we should go on with things as they were, and not stop on account of what might happen in the future and set aside any measure of importance which had been recommended in the manner that this Bill had been. It was a Bill to which the Government of Bengal attached great importance; and we were at present not called upon to consider its detailed provisions but only its principle. The principle of the Bill, as he understood it, was simply to enable parties interested in certain lands to make a sort of registration of the rights appertaining to such lands, and to give legal validity to that registration up to a certain point. Now in all the discussions which had taken place of late relative to the land tenures in Bengal, he thought that any one who was accustomed to the system of other parts of India must be struck with the absence of all official registration of rights and liabilities connected with the land which was universal elsewhere in India. Moreover, looking to the fact that the difficulties which landowners and the Government of Bengal had of late ex-

perienced, were in a great measure attributable to the absence of that sort of registration, he was disposed to view with favor any measure which went in the direction of securing such a desirable object. He should wish to confine his agreement with the Honorable Member for Bengal up to this point—namely, that so far as the registration provided by this Bill was concerned, it was a desirable object, and one which the Government ought to promote. With regard to the details, he trusted that the Honorable Member did not intend to hurry the Bill through the Council without allowing time for considering all its important bearings, not only because there were many of us who were imperfectly acquainted with tenures of this description in Bengal, but because we were not quite sure of the views entertained by the parties who were most interested in the matter. He understood that one very influential Association representing a large portion of the landed interest in Bengal, had expressed themselves favorably regarding the Bill. But he was not sure that that sentiment was universal, and he trusted that the Honorable Member would allow such time for the consideration of the Bill as would give all parties the fullest opportunity of considering it. With these views he purposed to vote in support of the Motion for the second reading of the Bill, reserving to himself, as the Honorable Member for the North-Western Provinces had done, the right of opposing any of its details when we had before us the opinions of those interested in the matter.

MR. SETON-KARR having risen to address the Council—

MR. HARINGTON rose and said that, if the Honorable Member had risen for the purpose of replying to the two Honorable Members (Mr. Erskine and Sir Bartle Frere) who had previously spoken on the merits of the Bill before the Council, he must remind the Council that he had not yet discussed the Bill itself, but had confined himself, in what he had previously said, to a suggestion that the Bill should be withdrawn with a view to its being brought before the Legislative Council which was shortly expected to be established for Bengal, or, if the Honorable Member for Bengal did not feel disposed to withdraw the Bill, that the Motion for the second reading should be allowed to lie over until Saturday next. Before the Honorable Member for Bengal spoke by way of reply to other Honorable Members on the merits of the Bill, he (Mr. Harington) should wish to say a few words on the subject of the Bill.

SIR BARTLE FRERE thought that the Honorable Member for the North-West Provinces was entitled to address the Council on the Bill, and that the Honorable Member for Bengal should confine himself at present to declaring whether he was willing or not to accede to the suggestion which had been made by the Honorable Member for the North-Western Provinces.

MR. SETON-KARR said that he was unable to adopt the suggestion of the Honorable Member for the North-Western Provinces for the withdrawal of the Bill. Looking also to the time which had already elapsed since the Bill was read a first time, he felt bound to state distinctly that it was his wish to press his Motion for the second reading to-day; and he should therefore feel obliged if the Honorable Member would favor him with an expression of his views now.

MR. HARINGTON said, there were two questions which he wished to ask the Honorable Member for Bengal before entering into the merits of the Bill. He had given the Honorable Member notice of his intention to put these questions. His first question was, whether the provisions of Sections XII and XIII Regulation IX of 1833 were acted upon in Bengal, and whether the village accounts therein mentioned were regularly submitted? His second question was, whether if the provisions of the two Sections, to which he had referred were not acted upon in Bengal, what was the reason of their not being acted upon? The accounts which were required to be kept under these two Sections, were intended to show amongst other things the quantity

of land in every Ryot's cultivation, and the rent paid by him for the land so cultivated, and they acted therefore, when kept, as a Register of the land in every Ryot's occupation. In the North-Western Provinces, where these village accounts were regularly kept and submitted at stated periods, they were always referred to when information was required in regard to any Ryot's cultivation or in respect to the land in any Ryot's occupation.

MR. SETON-KARR said that his answer would be both satisfactory and unsatisfactory. Section XII of Regulation IX of 1833 prescribed that the accounts, which it was incumbent on the putwaree or village accountant to keep, were to be kept in triplicate: one set was to be given to the canoongoe, an officer of the same kind as, but of higher grade than, the putwaree; one set was to go to the Collector; and the third was to remain with the putwaree himself. Section XIII of the same Regulation laid it down that the said accounts, instead of being periodically delivered once in six months, should be given in at such times as the Board of Revenue might direct. But these provisions had not been complied with, simply because in the greater part of Bengal, and certainly in that part of it with which he was practically acquainted, village officials such as the putwaree did not exist. He had had an opportunity of conferring with an officer of considerable experience, just arrived from the district of Jessore, who confirmed his (Mr. Seton-Karr's) impressions on this head, and whose knowledge tallied with his own. It was true that in the late discussions on the subject of the peculiar tenure known as "Ootbundy," the existence of a village functionary termed the *Halsanna*, had been brought prominently to notice, but this official was not in any way subordinate to the Revenue Authorities, and was more the servant of the Zemindar, than the protector of the Ryot, such as the putwaree was intended to be. Some years ago, he (Mr. Seton-Karr) had had occasion to enquire into the whole law and practice regarding canoongoes and putwarees on a reference from the Board of Revenue to the Government, and he found that in a large part of Bengal even the names of these village accountants did not exist. They existed, he believed, in Cuttack, and nominally in some of the Behar districts, and certainly in that of Purneah. But they did not actively or regularly discharge their functions, and little more remained of them but the name and shadow. These then were the reasons why the Sections alluded to were now useless and inoperative.

MR. HARINGTON thanked the Honorable Member for Bengal for the answers which he had given to his questions. He was aware that in Bengal there were no regular putwarees as there were in the North-Western Provinces; but he had always understood that there were persons in every village in Bengal who really did keep the village accounts, and who, to some extent, discharged the functions of the office of putwaree as it existed elsewhere. He proposed hereafter to allude more particularly to the Sections of the Regulation to which the questions put by him to the Honorable Member for Bengal referred. He would now address himself to the Bill before the Council. Looking to the quarter from which that Bill had proceeded, and fully appreciating the motives which had doubtless led the Honorable the Lieutenant-Governor of Bengal to cause the Bill to be introduced into this Council, it would have been a source of great pleasure to him if he could have given to the Bill a cordial and unqualified support. He said this on public grounds alone; but he might be permitted to add that his private feelings would also lead him to support the Bill. Every Honorable Member must be sensible of the very great difficulties with which the Honorable the Lieutenant-Governor of Bengal had had to contend, and with which he had still to contend, in carrying on his Government, owing to the unfortunate events of the last few months to which it was not necessary that he should more particularly allude on this occasion, and he thought that there was almost

a personal duty resting on every Honorable Member at this time to support the Honorable the Lieutenant-Governor of Bengal, and to render him every assistance in overcoming his present difficulties so far as assistance could be afforded by means of legislation. This was certainly his own feeling. But there were many reasons which prevented him from supporting the Bill as he could have desired. It was not his intention to oppose the Motion for the second reading of the Bill; but though he was willing to allow the Bill to be read a second time, it must be upon the distinct understanding that he did not by so doing affirm the principle of the Bill or admit its necessity or expediency, and that he reserved to himself the right, should he have the power, of opposing the Bill at any future stage and of voting against the third reading if the Bill ever got through a Committee of the whole Council. After what had fallen to-day from the Honorable Member for Bombay and the Honorable Chairman, he did not think that, whatever might have been the intentions of the Honorable Member for Bengal on the point, he would now attempt to hurry the Bill through the Council by a suspension of the Standing Orders. He (Mr. Harington) certainly could not agree to any proposition to that effect. Many interests might be seriously affected by the Bill, and it was absolutely necessary and only right that the Bill should be published for the prescribed period of eight weeks, in order that all those whose interests might be affected by the Bill should know what was in contemplation, and should have an opportunity of coming up to this Council with any representations that they might have to make on the subject of the Bill, of stating their objections to the Bill, and of proposing any alterations in it that they might consider proper. He should take it for granted therefore, that the Bill would be allowed to run the regular course fixed by the Standing Orders.

In considering this Bill, a very serious objection, a very great difficulty in the way of the adoption of the Bill, met them at the outset. When they referred to the annexures of the Bill, they found that the Bill had not the support of the Sudder Court and of the Sudder Board of Revenue, and that it had been introduced in opposition to the opinions of those authorities. The Sudder Board of Revenue, in deference apparently to the Honorable the Lieutenant-Governor of Bengal, had certainly expressed themselves with some qualification; but the Honorable the Lieutenant-Governor of Bengal would appear to have regarded the views of the Sudder Board of Revenue, equally with the views of the Sudder Court, as adverse to the Bill, for he said he regretted to find from the reports submitted by the Sudder Court and the Board of Revenue that difficulties were supposed to be in the way of the measure which he had suggested for the registration of Nij-jote lands and other holdings of a similar description.

The Sudder Board of Revenue said—

"The Board cannot disguise from themselves that the measure is attended with many difficulties, connected especially with the necessity of obtaining the exact record of specific areas and boundaries of the lands to be registered, and the facilities which will arise, especially in the present temper of those immediately interested in such a measure, for continued litigation and opposition and fraud."

Then followed this paragraph:—

"Still it appears to the majority of the Board that, unless they can establish the impracticability of the scheme, it is their duty to afford such assistance as lies in their power to Government, and with this view I am desired to submit, for consideration and orders, the following plan of Sub-Divisional Register."

The Sudder Court had expressed themselves much more decidedly. They said—

"Neither does it appear to the Court that a law on this subject, of the nature specified, would be practicable or expedient. The Court is unable to see why any special law should be made for lands of one sort rather than another. The ordinary Registration law is open to all, and all parties are at liberty to take advantage of its provisions. Moreover, a

Registration of the kind suggested in your letter would be useless in the great majority of cases of the nature for which it is intended, namely, those in which the right to grant the land, on the part of the grantor, the Ryot is denied by the Zemindar, and in all these cases the parties would be referred to a Civil suit, and the law would, as to them, be inoperative.

The Court is clearly of opinion that transactions relating, to use the words of Government, to the Nijjote lands of a Factory or other Ryotee or other rights in land, granted for the purpose of cultivation or other purposes, require no further protection of law than is given to them at present."

These were the opinions of the constituted advisers of the Honorable the Lieutenant-Governor of Bengal in matters of this nature—of officers of great ability, of considerable standing in the service, and of large experience, all of whom had passed the whole or the greater part of their official lives in Bengal, and they were consequently intimately acquainted with the peculiar land tenures of the country, with the character of the people, and with many other particulars, a knowledge of which was essential to a right understanding of this Bill and of its possible effects. Surely with these opinions before them the Council should consider well before they placed this Bill on the Statute Book. The gentlemen to whom he had spoken on the subject of this Bill, all concurred with the Sudder Court in condemning the Bill as impracticable. They said that it was impossible the Bill could work, and that proper machinery for carrying it out did not exist, and could not be obtained without incurring a very heavy expenditure. These were the opinions of Native as well as of European gentlemen. He wished to ask, in whose interests was the Bill introduced? Was it introduced in the interests of the landholders? He believed that the landholders, as a body, not only did not want the Bill, but that they would be found to be strongly opposed to it. Was the Bill introduced in the interests of the Ryots? It did not appear to him that, as a class, the Bill would benefit them, and they were not told that the Ryots had asked for the Bill. Was the Bill introduced in the interests of the Indigo Planters? Assuming that such was the case, would the Bill, as drawn, satisfy them? He had seen several letters in the newspapers on the subject of the Bill, which appeared to have been written by Indigo Planters, and judging from the contents of these letters, it might be said of the present Bill, as might have been said of a former Bill which had been introduced in the same interests, that those for whose benefit the Bill was intended "damned it with faint praise." They might form some idea as to the degree of satisfaction which this Bill, framed as it was at present, was likely to afford to the Indigo Planters, supposing the Bill to have been introduced in their interests, from a remark contained in a letter from the Secretary to the Landholders and Commercial Association to the Government of Bengal, which had recently been printed and circulated. He believed that this Association represented the Indigo Planters as a body. Paragraph 5 of the letter to which he was alluding said :—

"Of course rules would have to be made as to the evidence which should satisfy the Collector before he registered the fact of possession."

Was the Honorable Member for Bengal prepared to lay down such rules? The Council had not attempted any thing of the kind in the Codes of Civil and Criminal Procedure in the preparation of which they had recently been engaged, and he thought they would hardly undertake to frame rules of the nature mentioned for the guidance of the Collectors in carrying out the provisions of the Bill before them. The paragraph went on to say :—

"And there may be practical difficulties in the way of identifying the land in the absence of surveys and of village records in Bengal; but generally speaking, the Committee believe that this can be done sufficiently for the purpose, and if the Collectors were bound to give a certificate of the Registration, within twenty-four hours of its being required, and the Police acted at once on the production of such certificate, the Committee believe that the grievances of which the Planters have had such reason to complain last season would not again occur."

It was to the period of time within which this letter asked that the certificate of Registration should be granted on which the Police were immediately to act, to which he wished to call the attention of the Council. Twenty-four hours was the time mentioned. The first process under the Bill brought in by the Honorable Member for Bengal, was the issue of a notice to all persons concerned for fourteen days. He really thought that, when the Landholders Association asked that the certificate of Registration might be granted within twenty-four hours from the time it was required, they were either trifling with the Government, or, if they supposed that what they had asked for was practicable, they must be as ignorant of the landed tenures of Bengal as he (Mr. Harington) admitted himself to be.

SIR BARTLE FRERE here interrupted the speaker and said, he thought he must have misunderstood the part of the letter which he had quoted. What he (Sir Bartle Frere) understood it to mean was that the certificate should be granted within twenty-four hours of its being required after registration had taken place.

MR. HARINGTON said, he did not see how the part of the letter referred to by him could bear any other construction than that which he had put upon it. It asked that the certificate, on which Police action was at once to be taken, should be granted within twenty-four hours after it was required, that was, as he understood the request, within twenty-four hours after application was made to the Collector under the Bill. What else could be intended?

The Honorable Member who had brought in this Bill, seemed in his preliminary remarks not to have denied that there might be some force in an objection which had been taken to the Bill, that it would prove a dead letter; but then it was said that in that case the Bill would do no harm; and he had heard it suggested in other quarters that, looking to the circumstances under which the Bill had been introduced, if the Bill would do no harm, and if it might do some good, they ought not to refuse their assent to it. But he could not subscribe to these views. He did not think that they ought to put a new law upon the Statute Book, particularly a law of this kind, simply because it might do good and could not do harm. He thought they ought not to pass any law until they were satisfied not only that it was required, but that real practical benefit would certainly result from its enactment. He had been much struck with a remark in a letter which had been lately shewn to him from a gentleman holding a high official position at Bombay. It was to the effect that if we lost India, our epitaph should be "lost from over-legislation." He certainly thought there was a great disposition to over-legislate at the present time, and this Bill appeared to him to be in the direction of over-legislation. He had remarked not very long ago that what India wanted was, rest from legislation. With this Bill before them, he could not refrain from repeating the remark. He felt quite sure that this Bill would do no good. He wished he could feel as certain that it would not operate in the other direction, and that it would do no harm. In this country laws of the character of the Bill before them were almost always perverted by designing men to bad purposes. Some little time ago, in speaking on the subject of Act IV of 1840, he had said that that Act had been so perverted, and he found a confirmation of his remarks in the annexures of the present Bill. In the letter of the Sudder Court, to which he had already referred, the Court said—

> "Act IV of 1840, though a very good law theoretically, (and the present Bill might also theoretically be regarded as a very good Bill) is often made the means by which gross injustice is committed when worked by inexperienced Magisterial Officers, and the Court are of opinion that, if the Civil Courts, on being certified by the Magisterial Authorities of quarrels regarding lands, were to enquire summarily into them, less injustice would be done, and every other object of the law would be attained."

He feared that similar complaints would hereafter be made of the pre-

sent Bill, should it be allowed to pass into law. Indeed were he called upon to give a title to the present Bill, he should be disposed to call it a Bill to sow dissension, to promote litigation, and to fill the pockets of the Police and the Ameens or Officers who would be employed to make measurements under the Bill. And here he must express his surprise that, after all the abuse that had been lavished upon the Police of Bengal, they should propose to entrust to this class of officers a most difficult and delicate task, namely that of giving or maintaining possession under the certificates of registration which were to be granted under this Bill. To give the Council an idea of the class of men who would from necessity be employed to make the required measurements under the Bill, he might mention that in what were called Mahalwar Settlements, when, after the boundaries of the Mahal had been settled, the Ameens were called upon to put in the chuks, if they found that from some bad measurement they could not get in all the chuks which were required to be entered, instances were not wanting of their putting one chuk over another; that was, in their Maps they piled one piece of land upon another. While on the subject of measurement, he might state that he had been informed by those who knew something of these matters, that the expense of effecting a registry under this Bill would be very great, so much so that the costs alone, including Stamp Duty, Ameen's wages and fees, would to a considerable extent render the law a dead letter. This was an objection which had been very strongly urged against the Bill. The Honorable Member who had brought in the present Bill justified its introduction on the ground that the cases which it was intended to meet, required a more summary Procedure than could be had under any existing law. In the remarks with which he introduced the Bill, he said—

"However summary might be the Procedure under Act IV of 1840 something more summary still was seen to be required."

But did the Honorable Member seriously think that the Procedure under the present Bill would be more summary than it might be, and was under Act IV of 1840 when that law was properly worked. If Act IV of 1840 was not properly administered and delay took place under it, the fault was not in the law, but in those who administered it. He could not conceive any more summary Procedure than was provided by Act IV of 1840, that was to say, if it was intended to do justice. The only more summary investigation which he could imagine was no investigation at all. A certificate of registration might then be granted within the time mentioned by the Landholders' Association, but justice could not be done. Under Act IV of 1840, the Magistrate was required to fix a day for the attendance of the parties with their documents and witnesses. The Magistrate might fix as early a day as he pleased. He was not obliged to allow fourteen days, the time fixed in this Bill. On the attendance of the parties on the day fixed with their documents and witnesses, it was the duty of the Magistrate to take up the case, and after examining the parties and their witnesses and any documents exhibited by them, to determine the fact of possession, and at once to carry his order into execution. He would ask the Honorable and learned Judge opposite (Sir Charles Jackson) who had had large experience in such matters whether, supposing that justice was to be done, it was possible to devise any more summary mode of procedure than this. He (Mr Harington) certainly could not find that a more summary procedure was laid down in the Bill before the Council. Mr. Harington then proceeded to notice some of the details of the Bill, which he considered defective or open to objection, such as the want of proper rules for giving notice to all parties concerned, or who might have an interest in the matter in dispute, and the absence of any power to contest the Ameen's measurement or identification of the land, registration of which was required. On both these points he said the Bill appeared to him to require amend-

ment. He believed that the Honorable Chairman had pointed out what was the real want of Bengal, that was, not this Bill, but a field survey such as had been made in the North-Western Provinces, and such as he understood was now being made in the Madras Presidency. In some parts of Bengal he was informed such a survey had been made, and where it existed, disputes such as those which seemed to have led to the introduction of this Bill, seldom arose. It was where this survey had not been made, that no proper village records had been or could be kept, and he believed that it was the absence of this survey more than any thing else which prevented the observance, in the parts of lower Bengal in which it was supposed this Bill would prove most useful, of the provisions of the law of 1833 to which he had referred in the early part of these remarks. The making of such a survey would, no doubt, be a work of time, and it would cost much money, but nothing else would prove really effectual or remove the state of utter confusion which he was informed now existed. The Sudder Court had pointed out, in their letter already referred to, another great cause of many of the disputes regarding the occupation of land in the lower Provinces of Bengal, which often proved so difficult of satisfactory determination. They said—

"What is most required is, that parties should use greater caution than they at present do in taking lands from Ryots who have no power to grant them, and this want of caution no legislation can cure."

In other countries people were generally careful not to invest their money in law suits. They made proper enquiries beforehand. In this country, in the eagerness to get land, the ordinary precautions seemed to be often neglected. Difficulties and disputes then arose, for the removal or adjustment of which legislation was asked for. But the law generally proved ineffectual and complaints were made against the Government, when the fault really lay in the conduct of individuals.

MR. SETON-KARR said that, in replying to the objections taken by the Honorable Member for the North-Western Provinces, to the principles and to some of the details of this Bill, he should endeavor to occupy the time of the Council no longer than was absolutely necessary to answer those objections, and to illustrate his object. As regarded the expediency of leaving this Bill for the local Council, he would observe that the Lieutenant-Governor and some of the local authorities were in favor of this Bill, and wished it to be passed speedily into law, and the Lieutenant-Governor might surely be trusted when he urged this enactment as one that was both practicable and expedient. He (Mr. Seton-Karr) thought too, that the Honorable Member had underrated the effect of his own Revenue experience and knowledge of land tenures acquired in other parts of India, as well as his ability readily to understand and master what had been termed the intricate and perplexing land tenures of Bengal. He (Mr. Seton-Karr) often thought that great harm was done by Revenue officers insisting on the diversity of names, or dwelling on local and provincial phraseology in regard to land tenures, instead of looking out for the identity of tenures, rights, and customs, which lay hid beneath the surface, and which identity could be shown to exist in different and remote parts of India. A strange and uncouth nomenclature was a matter more for the orientalist and the student of philology. What the practised official should look for was the similarity to be found in points regarding the dominion of the soil, the different co-existing rights, and the nature of the landed interests in the province of Oude or elsewhere, as well as in the districts of Bengal. There was often much real identity, where there was strange diversity of names, and he was glad to confirm his opinion on this point by the authority of such an able and experienced officer as Mr. George Campbell, the author of Modern India and the present Judicial Commissioner of Oude.

With regard to what had fallen from Honorable Members as to undue haste in pressing on the Bill, he could only say that, knowing the wish of the Lieutenant-Governor to forward this enactment, and not knowing the duration of this Council, he was certainly anxious that the matter should not go to sleep. He had not the least wish to prevent any of those interested in the Bill, whether Native Zemindars or Ryots, from becoming acquainted with its provisions and from stating their objections. But he was in earnest that there should be no unnecessary delay. And in this view, without now saying anything definite as to any suspension of the Standing Orders, he should endeavor to the best of his power to carry out the second reading.

He should now address himself to the nature of the objections taken by the Board of Revenue and by the Sudder Court to the proposed enactment, on which objections the Honorable Member for the North-Western Provinces had placed much reliance. No one could more respect than he did the officers who were now filling those high and important situations, nor have a better opinion regarding their ability, experience, and great practical knowledge. But, with all respect and deference, it appeared to him that the Members of the Board had somewhat misapprehended the object of the Bill, or, at least, had not understood the nature of the agency by which it was intended to work the measure. The Board said, that they

"understand the object of the proposed measure to be to secure to the rightful occupant of lands, irrespective of the size of the tenure, the assistance of the Police in maintaining his rights without the necessity of an enquiry, which under present circumstances the Police cannot, with propriety, undertake."

And again, further on, they said that—

"Understanding it to be a Police measure, they would place its execution in the hands of Magistrates and their subordinates."

But the object of the Bill was the very reverse of this. It was intended to bar the agency of the Police as much as possible. The grant of the certificate, after certain preliminaries, was to be entrusted to the Collector, or subordinate officer having the powers of a Collector; the local enquiry would never be entrusted to any Police Officer, the increasing number of Sub-Divisions would enable the Bill to be worked; and all that the Police would be bound to do, would be to maintain in possession, without any enquiry, the person who produced a certificate of registry. The Police Officer would have nothing to do in that case, except to identify the land of which the certificate would give clear and distinct particulars.

Then, as to the objections raised by the Judges of the Sudder Court, the letter of their Register said that—

"Transactions relating to the Nij-jote lands of a factory or other ryottee or other rights on land, granted for the purpose of cultivation or for other purposes, required no further protection of law than was given to them at present."

This was the very point on which he (Mr. Seton-Karr) ventured with all respect to join issue. The experience of last year had abundantly proved that some further protection, some more summary mode of proceeding was required, than even the well known Act IV of 1840. Cases came on in numbers, in which disputed questions of fact, and even law, had to be put regularly in issue; documentary evidence had to be adduced, and witnesses summoned, and though every means was taken to secure promptitude of decision, in some cases, a month or even six weeks did elapse, from the institution in the first Court to the decision in appeal, at a critical time when a week or fortnight was of paramount importance.

The Court also said that they were unable to see "why any special law should be made for lands of one sort rather than another," and that "the ordinary registration law was open to all." But the ordinary registration law was one only for title and not for possession, and it was not the object of this Bill to make a special law for any

one sort of land. It was intended to give all persons the option of registering *that* possession in all sorts of land which was valuable, because it brought the possessor into immediate connection with the very *soil*, and which conferred on him the dominion thereof, to deal with it as he might please, for agricultural or other purposes. No distinction was attempted to be set up between lands held as the *khas* lands of a Zemindar or lands obtained from any Ryot who held them as *jote*. All were alike open to registration as to the possessory right. And native Zemindars might use this law if they wished to establish a Haut, to erect an alms-house, or to lay out a garden or a pleasure ground, on lands taken from ryots for that end.

Then the Honorable Member for the North-Western Provinces had asked in whose interests this Bill had been brought forward ? and to this he (Mr. Seton-Karr) at once would reply, that it had been proposed for the relief of European gentlemen who were now laboring under difficulties of no ordinary kind. In making this avowal, he denied that the Bill was intended to injure the Zemindar or the Ryot. Both might take advantage of it, and the Act, if passed, might be extended from the districts of Jessore and Nuddea where it would first operate, to any part of the country where any Zemindar or proprietor, Native or European, wished to cultivate, in security, sugar-cane or cotton, or any one of the higher kinds of agricultural produce.

The Honorable Member had asked him if he were prepared to lay down rules for the grant of the certificate, and he replied that, to the best of his ability, and with some help, he had laid them down already. The Honorable Member had talked of the European landholders, as wishing to have the matter decided off-hand, in the short space of twenty-four hours; but if he would look at Section VI of the Bill, he would see that fourteen days had been allowed for other persons to appear and to object to the grant of a certificate. Since the letter to which the Honorable gentleman had alluded, was written, the Landholders' Association had seen and commented on the Bill, and had not urged the least objection to these necessary provisions. As regarded the details of the enquiry, it would be seen that abundant notice would be given to all parties interested in the lands to be registered. One notice would be sent to the village; another to the thannah; a third to the local cutcherry of the Zemindar when this person had an interest in the matter; and he (Mr. Seton-Karr) should introduce a verbal alteration to the effect that, in transfers of actual Ryottee tenures, due notice must be sent to the Ryot. This would prevent attempts on a large scale at encroachment or undue appropriation. In cases where the transfer was from Ryot to Zemindar, whether European or native, no harm could thus be done to the former, and registration would not take place without his consent. It was true that if the Ryot colluded with a Zemindar not his own, and made over his *jote* or *jumma* to him, the other Zemindar to whom the Ryot really owed rent, and on whom he was dependant, might be prejudiced, but care would be taken that this latter person should be duly advised; and after all, no harm could possibly be done to the superior or Zemindary tenure. The person purchasing or leasing a *jote*, whoever he was, acquired by so doing only the status of a Ryot; he was subject to the same liabilities of measurement, enhancement, and payment of rent. He might defend his right with greater pertinacity, superior knowledge, and more powerful influence, than a mere agriculturist; but for all his wealth and influence, he was a Ryot while he retained such possession.

He took this opportunity of observing, with reference to what fell from the Honorable Member for Bombay, that, in proposing this Bill, he intened that where these questions of right were raised, the Collector or other officer was to hold a summary enquiry: when, if he thought the objections frivolous or vexatious, he would grant the certificate: if he thought they rested on some substantial basis, he

would refer the parties to the Civil Court. But, on conferring with the Lieutenant-Governor on this point, he had altered the Bill, so as to confine the enquiry to the mere point of possession. The power of enquiring into a question of right or interest, could not be defined with sufficient stringency; and as the Bill neither altered nor conferred any title, it could not injure or defeat any right. The Collector would therefore be bound to ascertain that the applicant was in possession and nothing more.

As to the general argument that this law would be a dead letter, all he could say was that, if it were dead, it would injure no one. If, on the other hand, it was regarded as likely to be a huge engine of chicanery, encroachment, and fraud, he had to observe that this might be vaguely predicated of any law whatever, intended to be worked in the interior of the country. No law, that the wit of the Statesman, or the experience of the best Administrator, could devise, might not be perverted or mis-used by interested or designing persons to the injury of others and to their own undue advantage. And if we were to pause in legislation, because, at some time, a law might be put to an unfair use, never contemplated by its framer, in order to suit a purpose, we might as well stop and shut up the Statute books at once.

It had been said repeatedly that the law of 1840 was sufficient. But that law came into operation only where there was a dispute, and in times of excitement. The advantage of a Registration law would be that the grant of certificates might go on, gradually and peacefully, in times when there was no excitement, under formalities just sufficient to give protection to all persons, and not cumbrous or intricate enough to cause injurious delay. Months or, it might be, years after the certificate had been granted, a dispute arose; and it would then only be necessary for the registered person to produce his certificate, in order to be kept in possession against all the world, till ousted by a decree of Court.

The Honorable Member had also dwelt on the expense and on the qualifications of the Ameens who might be sent to identify the lands. The expense would be diminished as much as possible, and the Ameens would be no better and no worse than those who were now deputed to make such enquiries in cases of various kinds instituted in all other Courts. The Collectors must work with such tools as they could get, and there was no reason to apprehend that the Ameens would enter on these enquiries in a worse spirit than they had done on any other enquiries hitherto. Besides, the Collector or other Officer might identify the land himself, if he had time to spare.

The Honorable Member for the North-Western Provinces had further said that, without a field survey, the Bill would be useless, and that rights and tenures in Bengali villages, were so confused and complicated, that it was next to impossible to ascertain and define them with precision. But something had been done to demarcate villages and estates by the survey which was now completed in most districts of Bengal. Estates, where they were interlaced after a fashion which had been designated "a diversified piece of mosaic," had been carefully marked off, and if three or more estates were entwined in one village, their bounds were known. If it were meant that no man could enter a village, and by any enquiry satisfy himself of the nature and extent of each person's holdings therein, he (Mr. Seton-Karr) ventured to impugn the correctness of this idea. Certainly, if Ryots combined to withhold information, and to deny that which a Zemindar or purchaser had a right to know, the task would not be an easy one. But if the Ryots did present themselves, he maintained that not only the rights, but the family history of each Ryot, the extent of each field, and the precise nature of the dependency on each Zemindar, could be ascertained with the most minute exactness. In every village there were men who could point out every field and its owner, and he might say that he had known this within his own personal experience.

He (Mr. Seton-Karr) would then say that this law could be worked without trusting to the dangerous agency of the Police; and that the Police could be subsequently employed here just as well as in identifying lands decreed by the Civil Court or in a suit for possession. He admitted the law to be intended primarily for operation in the districts of Jessore and Nuddea, and for the relief of the European Planter-Zemindars; but he trusted he had shown that it was open to all parties to use it, and that it might be found advantageous to those who, in other parts of India, had engaged in Agricultural or Commercial pursuits. He believed honestly that the law could be worked to the relief of the Europeans, with the approval of the authorities, without encroachment on the rights of the peasantry, and without prejudice to the interests of the Zemindar; and he ventured to hope that the Council would not oppose the second reading of an enactment which might be safely entrusted to the keeping of the practical officers into whose hands it would fall, and which might, in a reasonable measure, contribute to the security of property and to the peace of the districts.

The Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

FLOGGING.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to provide for the punishment of Flogging in certain cases;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

SIR BARTLE FRERE said, he would put it to the Honorable Member for the North-Western Provinces, whether there was any necessity for pressing this Bill on to-day.

MR. HARINGTON said that, seeing that this Bill was intended to form part of the Penal Code, he thought it was desirable that, if it was to be passed at all, it should be passed so as to come into operation simultaneously with that Code and with the Code of Criminal Procedure, that was the 1st Jan. next.

The Motion was put and carried.

Section I provided as follows:—

"Every male person who is convicted of an offence mentioned in any of the following Sections of The Indian Penal Code, may be sentenced to the punishment of flogging, namely—

Intentionally giving or fabricating false evidence—giving or fabricating false evidence with intent to procure conviction of a capital offence—giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment—false charge of an offence with intent to injure.	Chapter XI, Sections 193, 194, and 195; also Section 211, if the proceeding instituted be for an offence under Section 377 of the said Indian Penal Code, or the offence falsely charged be such an offence.
Assaulting or using Criminal force to a woman, with intent to outrage her modesty—rape—unnatural offences.	Chapter XVI, Sections 354, 376, and 377.
Theft—theft in a building, tent, or vessel—theft by clerk or servant of property in possession of master—theft after preparation made for causing death or hurt, in order to the committing of the theft—extortion by threat of accusation of an offence punishable with death or transportation, &c.—putting person in fear of accusation of offence, in order to commit extortion—robbery—attempt to commit robbery—voluntarily causing hurt in committing robbery,—dishonestly receiving stolen property—dishonestly receiving property stolen in the commission of a dacoity—habitually dealing in	Chapter XVII, Sections 379, 380, 381, 382, 388, 389, 392, 393, 394, 411, 412, and 413; also Sections 454, and 457, if the offence intended to be committed be punishable with flogging under this Act.

Stolen property—lurking house trespass or house breaking in order to the commission of an offence punishable with imprisonment—lurking house trespass or house breaking by night in order to the commission of an offence punishable with imprisonment.	
Forgery—forgery of a record of a Court of Justice, or of a public Register of Births, Power of Attorney, &c.—forgery of a valuable security or will—forgery for the purpose of cheating forgery for the purpose of harming the reputation of another.	Chapter XVIII, Sections 465, 466, 467, 468, and 469.

SIR CHARLES JACKSON said, it was not his intention to renew the discussion which took place on the second reading of this Bill, as he considered that the principle was then established that it was desirable, as a general rule, to retain the punishment of flogging. But still he thought it remained for the Council to lay down some principle in accordance with which the punishment of flogging was to be awarded to certain offences and not to others. It would be doing something to lay down as a principle, that a man should be flogged only for heinous offences, or for degrading offences, or if he were an old offender. If the Section were confined to the last two classes of offences, he (Sir Charles Jackson) would not have much objection to offer to the Bill at this stage. But he must say that he was at a loss to understand upon what principle the particular offences specified in the third part of the first Section had been selected. It appeared to him that, if Honorable Members were to write the names of all the offences against property on slips of paper, and put them into a hat, and then draw a certain number of them out at random, the selection would be just as consistent with principle, as the offences actually selected and now forming the third part of the first Section of the Bill. It was difficult to suppose upon what principle theft and lurking should be punished with flogging, and extortion and Criminal breaches of trust should not be visited with that punishment. Sir Charles Jackson here read the description of the offences recited in the margin of the third part of the Section (theft, &c.), and remarked that a man might commit a breach of trust, which was a much more serious offence than those which he had just read, and ruin a whole family, and yet he was to be exempt from the punishment of flogging. As he said before, he saw no principle in the Section, and he should therefore move in the first place, to omit "379, 380, 381" which related respectively to theft—theft in a building, tent, or vessel,—and theft by a clerk or servant of property in the possession of his master.

MR. HARINGTON said, the Honorable and learned Judge having, in deference to the decision come to on the Motion for the second reading of this Bill, conceded the point that flogging was to be one of the punishments which might be awarded under the Indian Penal Code, it was unnecessary for him to trouble the Committee with any remarks in support of the principle of the Bill. But he considered he had cause to complain of the manner in which the Honorable and learned Judge had spoken of the labors of the Select Committee on the Bill. The remarks of the Honorable and learned Judge were any thing but complimentary to the Select Committee, and he (Mr. Harington) thought that they were not deserved. The Honorable and learned Judge seemed to think that the offences, for which it was proposed that corporal punishment might be awarded, had been selected very much at random; that they had been drawn as it were by lot. He could assure the Honorable and learned Judge that the Select Committee had most anxiously considered every one of the offences included in the Bill before it was so included. The Select Committee might have erred in their selection; it was possible they had done so; but it certainly was not from any want of consideration. He repeated that the selection of the offences for which it

was thought that corporal punishment might be properly awarded, had been the subject of much discussion and anxious consideration at the Meetings of the Select Committee on the Bill. The Honorable and learned Judge would strike out the crime of theft from the Bill; but it appeared to him (Mr. Harington) that this was one of the offences which ought especially to be retained. In many cases in this country theft might be more properly and indeed more mercifully punished with corporal punishment than with any other penalty. The Honorable and learned Judge had expressed himself as if he thought that, on a conviction of the offences, included in the Bill, corporal punishment must necessarily be awarded; but this was not the case. The character of the Bill was permissive, not imperative. Had it been otherwise, he (Mr. Harington) should have had some hesitation in supporting the Bill. The Bill left it discretionary with the Court which convicted a person who was found guilty of an offence for which corporal punishment might be awarded, to inflict the penalty or not as it might think proper. This was what was done in the Presidency Police Act passed only last year. Under that Act any person in a Presidency Town convicted of theft might be flogged. The Act did not say that he should be flogged, but that he might be flogged, and they had no reason to suppose that the discretionary power thus given had been abused. In determining whether an accused person guilty of an offence, punishable with corporal punishment, should be flogged, the Court or Magistrate would necessarily take into consideration many circumstances which could not be put into the law. The position in life of the offender would no doubt often be one of those circumstances. As a case in point, he would refer to what took place on the trial some years ago of Pate for striking the Queen. Pate who had been an officer in the Army, was liable to be flogged for the offence committed by him. But Baron Alderson, who tried the case, remittted the corporal punishment, because he did not consider the accused a fitting object for that punishment. He should vote against the Honorable and learned Judge's Motion.

MR. FORBES said that, in all such cases, we must have some regard to the existing law and ought not to be led into utterly ignoring it when we had not only no evidence whatever that the law had operated injuriously, but had the best reason for believing that the reverse had been the case. Now in the Presidency of Madras the crime of theft had been punished with flogging for the last fifty years, and we had the assent to the retention of the law, as it stood, which the silence of the Government and all the authorities of Madras regarding the Bill must be supposed to have given. He (Mr. Forbes) was very confident that there were no Executive Officers in the Province—and they were those who after all were best able to form opinions on such questions as the present—who would willingly consent to any modification of the present punishment for theft; and as his own opinion quite coincided with what he believed was the general opinion of the Presidency with which he was more immediately connected, he should, to the utmost, oppose the Motion of the Honorable and learned Judge, to take away the punishment which the present law prescribed.

MR. ERSKINE said, he believed the question now related solely to the crime of theft, and the suitableness of flogging as a punishment for that crime. At the same time, since his Honorable and learned friend had referred in a marked manner to what he described as a singular want of method in the selection of offences to be made punishable with flogging under this Bill, and since his Honorable and learned friend had likewise drawn attention, some days ago, to what he regarded as a want of proper respect on his (Mr. Erskine's) part for the authority of English law, he could not help noticing that the Honorable and learned Vice-President, on the occasion of the second reading of this Bill, had stated that all the offences for which the punishment of

flogging was proposed by this Section were already punishable in that way according to English law. That statement would, he was sure, have due weight with the Honorable and learned Judge. Then with regard to theft in particular, he must again remind the Honorable and learned Judge that, just before this Bill was read a second time, the Council had passed an Act which allowed flogging to be awarded in cases of theft in the Presidency Towns. That punishment had been prescribed for that offence in the Municipal Acts some years ago, and the provision had very recently been re-enacted without opposition. Again, it had been objected that there seemed to be no reason why flogging should be adjudged for minor thefts when some more aggravated kinds of robbery were not made punishable in that way. But in this respect the Bill had been framed on what commended itself to him as a sound principle. It did not seem to be expedient that crimes calling for sentences of transportation or of imprisonment for long periods, should subject the offender to corporal punishment. When an offender was to be in the power of Government for such a length of time as admitted of a reasonable prospect of reformatory treatment being brought to bear on his character with effect, it would surely be inexpedient to commence that treatment by an infliction of this kind. Moreover, common thefts were often committed by very young persons, and by persons belonging to wandering or wild tribes, and even by professional thieves. For all of them flogging might be a more appropriate punishment than imprisonment in this country. These, he thought, were reasons for maintaining the present law to the extent proposed by the Bill. It had been approved by the Bombay Government; and, for his own part, he thought it his duty to oppose the Motion of the Honorable and learned Judge.

MR. SETON-KARR said that, without pledging himself to vote one way or the other in regard to all the classes of offences which the Honorable and learned Judge proposed to except, he thought that the case of theft was one to which the punishment of flogging peculiarly applied. We had had a law for flogging since 1844 in this country, and had found it very useful in the cases of young offenders. Certainly, the position in society of offenders should also be taken into consideration, but theft was usually committed by persons of a class not generally entitled to any tenderness on this account. Therefore, he should vote for the retention of this kind of punishment in cases of theft, and certainly in cases of forgery and perjury.

SIR CHARLES JACKSON said, he had only a few words to say in reply to what had fallen. Honorable Members first resorted to an argument *ad hominem*. They pointed out that there was an English Act passed in the reign of George IV, which gave the Supreme Court the power of inflicting corporal punishment for many such offences as these; and that, therefore, the punishment must be an appropriate punishment for such offences. He did not appreciate the logic of such an argument, but he begged emphatically to state that that was a law which every Judge of the Court within his recollection had declined to act upon. It might in fact be called an obsolete enactment. The next argument was that an Act was passed by this Council, a year or two ago, for the regulation of the Police in the Presidency Towns, which allowed of corporal punishment in cases of theft. He must say that he had no recollection of such a Clause in that Bill, and he was sure that his attention could not have been called to it. He was a Member of the Council at the time; and had he been aware of it, he should have opposed it. But the question was, whether the Council should pass a Bill with such a Clause as this as a precious *pendant* to the great Penal Code they had enacted. What he had said was this—and if the Honorable Gentlemen had answered it, it would have been something more to the purpose than what they had said. He had argued—and in doing so, he could assure the Council that he meant no

personal disrespect to the Select Committee—that if the offences had been written on slips of paper, and put into a hat, and then drawn out at random, the selection of offences to be punished would have been just as consistent with principle as the selection which formed part of the Section as it now stood. He had put as an example the case of extortion, as it was a much more serious offence than some of those mentioned, and if Honorable Members had explained why and on what principle this crime was omitted from the Clause, and theft included in it, he should have been glad to hear them.

MR. HARINGTON remarked that extortion was included in the Bill.

SIR CHARLES JACKSON—No, simple extortion was not included; and why that should be so, if theft was to be punished with flogging, he was at a loss to understand. The Honorable Gentlemen, in speaking on this question, had made admissions which involved the general principle as to the propriety of flogging as a punishment, for they said that they would never allow it to be given in every case, and that the condition in life of the offender would be taken into consideration. He (Sir Charles Jackson) thought that these admissions laid bare a very weak point in their case. If flogging was not to be resorted to generally, the question whether it should be inflicted would be in practice often decided by very young and incompetent officers; and if the position of the parties was to be considered, then this law, in addition to its other defects, was one of that very objectionable class which was administered in one way for the rich and in another for the poor.

MR. FORBES said, he merely wished to say a few words with reference to the observation of the Honorable and learned Judge as to the Clause in the Presidency Towns Police Bill, which continued and extended the punishment of flogging, not having attracted his attention or the attention of the Council. The Bill was before the Council for several months, and although it finally fell into his (Mr. Forbes') hands, it was introduced so far back as when Mr. Currie was in the Council. He (Mr. Forbes) would also call to the recollection of the Committee that Sir Mordaunt Wells, who was temporarily a Member of this Council during the absence of the Honorable and learned Judge (Sir Charles Jackson), was a Member of the Select Committee on the Police Bill, and signed the Report, so that it could hardly be said that the Bill attracted no attention from the Council.

SIR CHARLES JACKSON—That accounts for my not having known about it.

MR. FORBES said that, although Sir Mordaunt Wells was a Member of the Select Committee, yet the Honorable and learned Judge (Sir Charles Jackson) had resumed his seat in this Council when the Bill passed through a Committee of the whole Council, and had been read a third time and passed.

SIR CHARLES JACKSON replied, he could only say, as he had said before, that the Clause in question had not attracted his attention, nor did he believe any debate took place on it, or else he should certainly have opposed it.

SIR BARTLE FRERE said, he should say a few words to justify the vote he was about to give, especially as regarded the principle on which the selection of offences included in the Bill had been made. To the classes of offences to which the Honorable and learned Judge proposed to confine the punishment of flogging, namely heinous offences, degrading offences, and habitual offences, he (Sir Bartle Frere) would add another, namely offences committed by persons for whom there was no other appropriate punishment provided in the Code. Now that, it seemed to him, would include theft committed by persons who had no property, and from whom you could not therefore recover a fine, or to whom, from their habits of life, ordinary imprisonment was really no punishment at all, such as common rogues or vagabonds; or again persons whom you could not punish with imprisonment without inflicting a greater amount of suffering than was intended by the mere privation of liberty. It was quite

true that the lower classes of offenders in large towns and civilized communities might be imprisoned with little injury to their health. But if you went into any part of the country where wild tribes were to be found, you would find large classes who positively could not be imprisoned for three months without very serious injury to their health and without the risk of endangering their lives. Now he would not refer to the case of the Andamans, though we all knew that you could not make an inhabitant of the Andamans live in a house and wear clothes, without risk of killing him. It might be said that that was an extreme case, and one for which we were not required to legislate. But there were jungly tribes in great numbers and in all parts of India, for whom you were required to legislate, and who could not be put into a Jail for any long period without serious risk of causing their death. This assertion was not lightly made, and he would cite but one case in point. In the town of Tannah, which was little more than twenty miles from Bombay, there was a Jail which was under the close supervision of officers of Government, and in it were frequently confined large numbers of the wild tribes from the Concan, the district nearest to Bombay. At the time he spoke of, the officer in medical charge of the Jail, Dr. Costello, a very able medical officer and most benevolent and excellent man, told him (Sir Bartle Frere) that he found it a difficult matter to keep some of these wild jungly tribes in imprisonment alive for even six months in succession. With the utmost care and attention to their diet and with every indulgence, they were apt suddenly to droop, sicken, and die. Now he would ask if that was a case in which the punishment of flogging would be an inhuman punishment? Was not the punishment of imprisonment, which was in fact a sentence of death to such poor creatures, far more inhuman? These were not isolated or doubtful facts. They were well ascertained by able scientific officers, and were true of all the wilder tribes, amounting to many millions, in all parts of India. It was in this point of view that it appeared to him that, when the Council was enacting a Code of laws for all India, it was necessary to provide a punishment which, however inapplicable it might be to the civilized portion of the inhabitants, was a far more merciful punishment than imprisonment to the less civilized classes; and he would put it to the Honorable and learned Judge whether he believed there was any serious danger of such a provision being abused. In such cases you must leave something to the judgment and discretion of your officers. He would ask the Honorable and learned Judge whether any bad consequences had resulted from the enactment in England of the law which still stood in the Statute Book—not an old law but one enacted within the memory of every Member there present, the Act of Geo. IV. He claimed the Honorable and learned Judge's experience of that Act as an argument in favor of the Bill before them, as showing that, where the means existed for punishing theft with imprisonment in proper Jails and by other means, the Judges need not and did not resort to flogging. Viewing the punishment in this light as a necessary evil—as a punishment for which the only substitute would be in many cases far more severe than was intended—he was compelled to vote against the amendment of the Honorable and learned Judge.

SIR CHARLES JACKSON said, he had spoken in reply just now, because he thought all Honorable Members who wished to speak had then addressed the Committee. He should now say but one word in reply with respect to what had fallen from the Honorable Chairman, who had contended that flogging was a more merciful punishment for persons belonging to certain wild tribes than imprisonment. If the Honorable Chairman put the case of those wild tribes as an exceptional one, justifying their punishment by flogging rather than imprisonment, he (Sir Charles Jackson) was quite willing to defer to his reasoning. But if the Honorable Chairman carried his

argument farther and said that, because flogging was best suited for Criminals belonging to such wild tribes, it ought therefore to be applied to all classes in India, he was unable to appreciate the logical sequence of such an argument, and must decline to accept it as one that should govern the question before them.

The question being put, the Council divided as follows :—

Aye 1.	*Noes* 6.
Sir Charles Jackson.	Mr. Seton-Karr.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived.

SIR CHARLES JACKSON then moved the omission of "392, 393" (robbery and attempt to commit robbery), of "411, 412" (dishonestly receiving stolen property and dishonestly receiving property in the commission of a dacoity), and of the words "also Sections 454 and 457 (lurking house-trespasses or house-breaking in order to the commission of an offence punishable with imprisonment, and lurking house-trespass or house-breaking after preparation made for causing hurt to any person) if the offence intended to be committed be punishable with flogging under this Act."

The Motion was put, and negatived.

SIR CHARLES JACKSON then moved the introduction of the following words :—

"No person shall be sentenced to the punishment of flogging in Section 379, 380, 381, 392, 393, 411, 412, 454, or 457, unless it is proved that he has been previously convicted of a Criminal offence."

MR. HARINGTON said, he could not agree to this proposition, which, if adopted, would defeat two of the most important objects contemplated in the introduction of the Bill, namely, to keep persons offending against the law for the first time from the contamination invariably attendant upon imprisonment in a Criminal Jail and to prevent the crowding of the Jails. There was little hope of reformation after a man had passed any time in a Criminal Jail. He generally came out a worse character than he went in, and there would be little advantage in flogging him for a second offence; whereas if he were flogged for a first offence and allowed to return to his home without being subjected to the contamination of a Criminal Jail, there was hope that he might reform and become a useful member of the community.

MR. FORBES said, he should take two exceptions to the amendment of the Honorable and learned Judge. One referred to a point just mentioned by the Honorable Chairman, and he ought perhaps to apologize for trespassing upon the Honorable Gentleman's domain. If the wandering hill tribes to whom, as just now forcibly shown by the Honorable Chairman, confinement in a prison was tantamount to death, were to be subjected to corporal punishment only on a second or third offence, it was evident that their death during their incarceration for their first offence would leave it a matter of very little moment what punishment was prescribed for their second offence. Were the view of the Honorable and learned Judge adopted, the whole benefit anticipated from subjecting these tribes to corporal punishment instead of to imprisonment would be frustrated, and they would die during the period of their imprisonment for their first offence. But independently of that, it was universally admitted that the great object of all punishments was the repression of crime; and if it were found that the punishment of flogging had a greater deterrent effect than any other punishment, and that those who had once been subjected to it were very seldom indeed subjected to it again, it was clear that it was the best punishment to award for a first offence, for there would then be little occasion to punish for a second, and the end of all punishment, namely the repression of crime, would have been attained. This point was referred to in the papers which had come up from Oude.

Mr. Forbes here read from those papers showing that, in the Lucknow

Division, while 2,050 persons were flogged once, only 65 were flogged on a second conviction—that, in the Baraitch Division, while 987 were flogged once, ten only were flogged a second time—that, in the Khyrabad Division, where 815 were flogged once, only one solitary criminal was flogged twice—and that, in the Baiswara Division, 755 were flogged once, and seven a second time. He thought that these statistics showed the good effect of flogging in preventing second and subsequent offences, and that it was therefore a much more merciful, wise, and safe punishment than having recourse to imprisonment and all its contaminating influences.

SIR CHALES JACKSON said that, if he believed, with the Honorable Member for the North-Western Provinces and the Honorable Member for Madras, that flogging was the greatest possible deterrent of crime, or that an offender would thereby be reformed, he should yield to the force of the argument of those Honorable Gentlemen. But he thought that was not the fact. In the case of children it might be so, but not in the case of grown men. Then, again, as to the hill tribes, he should not be surprized if their peculiar case was not brought forward in connection with every Section. But, as he had already observed, he had no objection to pass any Clause which would provide for the flogging of the members of those tribes as an exceptional case. Then, again, as to the statistics of the Honorable Member for Madras, he (Sir Charles Jackson) must say that nothing could so easily be made so inaccurate as figures. He should like to know what period of time was covered by those returns. If only one year, the number of persons flogged a second time was large. The returns could not cover any long period, he was certain; for the introduction of the present judicial system in Oude was very recent. In the absence of these particulars, and unless they were informed of the principle on which they were prepared, he must say that those statistics were not to be relied on.

Mr. Forbes

The question being put, the Council divided as follows:—

Aye 1.	*Noes.* 6
Sir Charles Jackson.	Mr. Seton-Karr.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived, and the Section was then passed,

Section II provided as follows:—

"The punishment of flogging shall form no part of the sentence passed on any offender of such an age or in such a state of health that the punishment is likely to cause a kind of suffering not ordinarily intended by a sentence of flogging, or any person sentenced to death, or transportation, or imprisonment for a period exceeding five years."

SIR CHARLES JACKSON said, he did not understand this Section. The language was apparently intended to be very delicate. He must say he could not gather what was intended by the words "likely to cause a kind of suffering not ordinarily intended by a sentence of flogging." He thought that a great deal of torture was ordinarily intended by a sentence of flogging. Then, again, the latter part of the Section was open to objection, for by Section I it was provided that a person committing rape or an unnatural offence should be flogged, whereas by this Section the Judge could not sentence the offender to be flogged if he were already sentenced to transportation or imprisonment exceeding five years. Now in every case a man committing such an offence would be transported or get imprisoned for five years; and the Clause, as it stood, was tantamount to saying that the punishment of flogging was not to be inflicted in those cases in which all were agreed that flogging would be the most appropriate punishment, namely degrading offences. Lastly, this Section was not consistent with Section V which provided that the sentence of flogging might be in addition to any sentence which the Court was authorized by the Penal Code to award.

MR. ERSKINE said, in regard to the first point, that words very similar to those to which the Honorable and learned Judge had taken exception, formed part, and had long formed part, of the Bombay Code. The meaning was that, if a person were suffering from disease—to put an extreme case for instance, if he were afflicted with leprosy—it was not intended that he should be liable to be flogged. He (Mr. Erskine) did not know that there was in the words any more mysterious meaning than that. As to the limitation of the terms of imprisonment in combination with which flogging might be awarded, he had already explained the reason which suggested that limitation, and which appeared to him to be a sufficient reason. In ordinary sentences it was desirable, when flogging was awardable, to use it as a substitute for imprisonment—or in order to subject any offender whom it was deemed inexpedient to imprison for a length of time, to the shortest possible term of confinement. When, however, the offence was so heinous as to call for a lengthened term of imprisonment, there should generally be a prospect of reformatory agencies being brought effectively to bear upon the offender; and it was important that his penal treatment should not begin with the infliction of corporal punishment.

MR. SETON-KARR confessed that he shared the doubts of the Honorable and learned Judge as to the precise meaning of the words alluded to, and he would prefer to see words introduced, showing that the state of health and ability to bear punishment were the points to be considered.

After some further discussion in which Sir Robert Napier took part, the words "who by reason of his youth or age is unfit for such punishment, or who is in such a state of health as to be unable to bear such punishment" were substituted for the words "of such an age, or in such a state of health that the punishment is likely to cause a kind of suffering not ordinarily intended by a sentence of flogging," on the Motion of Mr. Seton-Karr; and the Section, as amended, was then passed.

Section III provided as follows:—

"The punishment of flogging under this Act shall be inflicted with a ratan, and shall not exceed thirty stripes. In the case of an offender under the age of sixteen years, the stripes shall not exceed ten."

SIR CHARLES JACKSON said, he objected to this Section on several grounds. First, he objected to the word "ratan" as being vague. The species of ratan and its length should be mentioned. The Honorable Member for the North-Western Provinces might laugh; but he (Sir Charles Jackson) would read a letter from one of the Magistrates in the North-Western Provinces, and the Honorable Member would see that flogging was no laughing matter. The following was the description given in the letter as to the manner in which the punishment was inflicted:—

"In the Legislative Council, most of the Members are, I believe, ignorant of what the punishment they are about to authorize may, and, I fear not unfrequently, really *does* become.

In districts where flogging is a favorite punishment, you find a couple of specially powerful and thoroughly trained tent-pitchers* invested with the office of floggers. The man who is to be punished is stript and tied up to the triangle; one of the "clashees," also stript to his waist, (which is firmly cinctured) steps out, armed with a rattan about 5½ feet long, he takes two paces to the left of the triangle, measures the distance, so that the end of his weapon will exactly fall across the offender's body, makes a slight scratch on the ground with one foot to guide his after movements, steps back two paces further, firmly grasps in both hands the rattan, and then, swinging it round his head, and bounding forward to the line, delivers with the whole strength of his arm and the whole weight of his body, a blow that screeches through the air like a rifle bullet. An instant after there is a long gash on the body almost like a sword wound, from which the blood streams before the second blow descends.

The first "clashee" gives five such stripes, and the second then steps forward, to be again succeeded after five more stripes by the first, and so on till the torture, which I should say lasted fully a quarter of an hour, is concluded. The first twenty stripes are usually laid about an inch apart and just parallel to each other, and

* "*Clashees*," as they are called, selected because the practice of wielding huge mallets endues them with great strength in the arms.

the last ten are *crossed* over these. Strong man habitually faint at the second or third crossed stroke, and men have died, during the disturbances, from the effects of fifty well administered stripes."

He (Sir Charles Jackson) therefore thought it was not an unimportant matter to define the length of the ratan. He should say that a four feet ratan was quite long enough for the purpose. It would amount to a cutting and wounding if a longer ratan were used. Then again, was the punishment to be inflicted on the bare back or on the buttocks? If inflicted on the bare back in the manner described by the Magistrate whose letter he had just read, it was likely to injure the muscles. If inflicted on the buttocks, it would not do so much harm, but would be considered more degrading. He would now, however, move the insertion after the word "ratan," of the words "which shall not be of greater length than four feet, and the number of stripes shall not exceed thirty which shall be inflicted by one and the same man."

SIR BARTLE FRERE said, he would merely remark, with reference to what had fallen from the Honorable and learned Judge, that in the whole course of his experience he had never seen or heard of a judicial flogging having been administered in the mode described in the letter which had just been read. In Bombay the law provided that—

"The punishment of flogging shall be inflicted on the bare back with a ratan or such other instrument as may be authorized by the Sudder Fouzdarry Adawlut No culprit shall suffer more than twenty-five stripes at one time or shall be sentenced to more than a hundred in one judgment."

As far as he recollected, it had been usual to inflict flogging with a cat-o'-nine tails. He believed it was barely possible that any marks could remain after a few weeks, and he was quite certain that no serious injury of the nature described by the Honorable and learned Judge, could ensue. He thought it would be very much better to insert the words "with such an instrument and in such a manner as shall be prescribed by the local Government" in substitution "for the words with a ratan and shall not exceed thirty stripes." He should even object to the four feet ratan.

SIR CHARLES JACKSON said, this showed what a difficult punishment flogging was to deal with. He was sure the Honorable Chairman and no Member of the Council would permit a man to be flogged in the way described. But, if there was a Magistrate who had a liking for flogging, he could make it a dangerous means of torture. It was most unequal in its operation both as regards the Magistrate who ordered, the man who flogged, and the criminal who suffered.

MR. HARINGTON said, he might have smiled before he heard the letter which had just been read to them by the Honorable and learned Judge; but he certainly felt no inclination to smile after hearing that letter. He had listened to the letter with great pain. It was difficult to imagine any thing more inhuman, more cruel, or more improper than the mode of administering corporal punishment therein described. He could not have supposed that such a practice anywhere existed. He believed that the writer of the letter was not now in the country; but he had no doubt that the attention of the Honorable the Lieutenant-Governor for the North-Western Provinces would be attracted to the contents of this letter which would appear in the speech of the Honorable and learned Judge in the report of to-day's proceedings, and that His Honor would institute an immediate enquiry and take steps to put a stop to such a mode of administering corporal punishment wherever it was found to be followed under his Government.

SIR CHARLES JACKSON here interrupted the speaker and said the letter did not state that the mode of flogging which it described was general.

MR. HARINGTON resumed, he did not understand the writer to say that the practice was general, but he presumed that in the description given

by him, the writer was not drawing a picture from his own imagination, but was relating what he knew to have occurred, and he must repeat his conviction that His Honor the Lieutenant-Governor of the North-Western Provinces, on his attention being drawn to to-day's debate, would institute an enquiry and take proper steps in the matter. The Honorable and learned Judge had done him no more than justice, and he was sure he might say the same of every other Honorable Member present, when he declared his belief that they would never allow such a mode of administering corporal punishment to be adopted. When he brought in this Bill, he had stated that, during the whole course of his judicial service, he had no recollection of ever having awarded corporal punishment, and he would now repeat that statement. As a matter of duty, he had attended when corporal punishment was inflicted upon Soldiers, and in order to support the Captain of a Vessel in which he was a passenger he had been present when Sailors had been flogged, and he could truly say that it was a most painful sight. Indeed it was painful to witness any person undergoing punishment of any kind. The smile which had been noticed by the Honorable and learned Judge, had been produced in consequence of its seeming to him strange that the Honorable and learned Judge should consider it necessary to legislate in this Bill upon a point which had never been made the subject of legislation before, namely, as to the length or circumference of the ratan or other weapon which might be used for corporal punishment. Hitherto this had always been left to the Executive Government and it had been so left in the Police Act of last year to which he must again refer. But after the letter which had been read to them to-day, he could only say that, if the Honorable and learned Judge considered it advisable to fix by law the length and circumference of the ratan which might be used for the infliction of corporal punishment under this Bill, he (Mr. Harington) should most certainly not oppose any Motion that the Honorable and learned Judge might make for that purpose.

Mr. SETON-KARR said that he had never witnessed or heard of flogging applied with such scientific barbarity, as he must term it, as described in the letter of the Honorable and learned Judge's up-country correspondent. He had however known of Magistrates who, more habitually than others, resorted to this mode of punishment, and who picked out strong limbed men for this duty, and instructed them to apply the cane with unusual firmness and skill. He certainly thought that, in this law, the Council should endeavor to define the mode of punishment, the number of stripes, and the length and kind of the weapon. He (Mr. Seton-Karr) had also seen scars left by flogging which had been inflicted years or months previously, and which seemed likely to last during life-time. He (Mr. Seton-Karr) preferred the ratan for Bengal as indigenous, and familiar to Magistrates and to the native officials.

Sir BARTLE FRERE said, he must repeat that he should object even to the definition of the Honorable and learned Judge. He should very much prefer to insert the words "with such an instrument and in such a manner as shall be prescribed by the local Government."

Mr. FORBES said that, as this Bill was to form part of the Penal Code for all India, it was necessary that some uniform rule should be prescribed by law. If the matter were to be left to the local Governments, they might pass different orders upon it, and uniformity of punishment for each particular crime would be at an end. In the Madras Presidency a cat-o'-nine-tails was used. They were issued from the Arsenal, and were all alike; and when a cat was worn out, it was re urned and a new one issued in its stead.

Sir CHARLES JACKSON said that a cat-o'-nine-tails was an awful weapon. It depended on the knowledge of the person who used it. If the instrument used, in any way resembled a cat used in the Royal Navy,

thirty strokes would be an awful punishment; and if the flogger with any cat-o'-nine-tails divided the tails between each stroke, the punishment inflicted with it would be very severe.

After some further discussion, Sir Bartle Frere's amendment was put, and the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Erskine.	Mr. Seton-Karr.
Sir Robert Napier.	Sir Charles Jackson.
The Chairman.	Mr. Forbes.
	Mr. Harington.

So the Motion was negatived.

SIR BARTLE FRERE then moved, that the words "shall be inflicted with a cat-o'-nine-tails" be substituted for "shall be inflicted with a ratan."

The question being put, the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Erskine.	Mr. Seton-Karr.
Sir Robert Napier.	Sir Charles Jackson.
The Chairman.	Mr. Forbes.
	Mr. Harington.

So the Motion was negatived.

SIR CHARLES JACKSON'S amendment was then put that the words "and shall not exceed thirty stripes" be omitted, and the following words substituted for them :—

"which shall not be of greater length than four feet or of greater circumference than three-fourths of an inch, and the number of stripes shall not exceed thirty which shall be inflicted by one and the same man."

Agreed to.

SIR CHARLES JACKSON said that the Bill, as it now stood, did not provide whether the punishment was to be inflicted on the bare back or on the buttocks. Unless this was prescribed, a cause of action might lie in the Supreme Court if the punishment was administered in either one way or the other.

SIR BARTLE FRERE then moved that the words "on the bare back" be inserted after the words "shall be inflicted."

MR. SETON-KARR said, he would leave it to the discretion of the Magistrate, whether it should be on the bare back or on the breech. He should move by way of amendment that the words "or on the buttocks" be added to the words proposed by the Honorable Chairman.

MR. SETON-KARR'S amendment being put, the Council divided as follows :—

Ayes 3.	*Noes* 4.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Sir Robert Napier.
	The Chairman.

So the amendment was negatived.

SIR BARTLE FRERE'S Motion was then put and carried, and the Section as amended passed.

Section VII provided as follows :—

"If the sentence of flogging is passed by a Supreme Court, it shall be executed in the presence of the Sheriff or of some other person appointed by such Court. If the sentence is passed by any other Court, it shall be executed in the presence of a Justice of the Peace, or an officer exercising any of the powers of a Magistrate.

SIR CHARLES JACKSON moved that the above Section, amended as follows, be transposed so as to follow Section III :—

"The punishment of flogging shall always be inflicted in the presence of a Medical Officer where the services of such an Officer are available. If the sentence of flogging is passed by a Supreme Court, and the prisoner is an inmate of the House of Correction, the sentence shall be executed in the presence of the Superintendent or Deputy Superintendent of Police; and if the prisoner be an inmate of the Great Jail, it shall be executed in the presence of the Sheriff, Under-Sheriff or of some other person appointed by such Court," &c.

Agreed to.

Section IV provided as follows :—

"A sentence of flogging under this Act may be passed by any Officer exercising the powers of a Magistrate, or by any Officer having the powers of punishment which are given by any law for the time being in force to an Officer exercising the powers of a Magistrate, or by any Officer specially empowered by the Government. No sentence of flogging shall be executed by instalments."

SIR CHARLES JACKSON moved the substitution of the words "not inferior to a Subordinate Magistrate of the 1st Class" for the words "having the powers of punishment which are given by any law for the time being in force to an Officer exercising the powers of a Magistrate or by any Officer."

Agreed to.

The words "No sentence of flogging shall be executed by instalments" at the end of the above Section were (on the Motion of Sir Charles Jackson) transposed so as to stand at the end of Section III.

Section V was passed after an amendment, and the Clerk of the Council was authorized to strike out the word "said" wherever it occurred before the words "Indian Penal Code."

Section VI provided as follows :—

"In cases in which the punishment of flogging is awarded in addition to the punishment of imprisonment, the flogging shall not be inflicted till two months from the date of the sentence, if the sentence is open to revision by a Superior Court, unless the sentence shall have been sooner confirmed, or an appeal from it shall have been sooner rejected."

After some discussion, amendments were carried which made the Section run as follows :—

"In cases in which the punishment of flogging is awarded in addition to the punishment of imprisonment, the flogging shall not be inflicted if an appeal is preferred within fifteen days from the date of the sentence or until two months from such date, if the sentence is open to revision by a Superior Court, unless the sentence shall have been sooner confirmed, or an appeal from it shall have been sooner rejected. If an appeal is preferred within fifteen days from the date of the sentence and no order is received within two months from such date, the Officer entrusted with the execution of the sentence shall refer for orders to the Appellate Court."

Sections VIII and IX were passed as they stood.

MR. HARINGTON then moved that Sections IV, V, and VI be transposed so as to follow Section II.

Agreed to.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

RECOVERY OF RENTS (BENGAL).

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)," in consequence of the absence of the Honorable and learned Vice-President.

COURTS OF REQUESTS (STRAITS' SETTLEMENT).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a few verbal amendments in Sections XX, XXI, and XXIV, in Forms B, C, D, and E, and in the Preamble, and, the Council having resumed its sitting, the Bill was reported.

MALACCA LANDS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate the occupation of land in the Settlement of Malacca;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

PORT BLAIR.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate the administration of affairs in Port Blair;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MERCHANT SEAMEN.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to merchant seamen)."

Agreed to.

The Bill passed through Committee after a verbal amendment in Section II, and, the Council having resumed its sitting, was reported.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" to the Governor-General for his assent.

Agreed to.

STAMP DUTIES.

MR. HARINGTON gave notice that he would on Saturday next move the second reading of the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to stamp duties)".

COURTS OF REQUESTS (STRAITS' SETTLEMENT).

MR. FORBES moved that the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca" be republished for two months. He said that many alterations had been made in the Bill in its passage through the Select Committee, and it was advisable that the inhabitants should have an opportunity of considering them before the Bill was finally passed into law.

Agreed to.

REPEAL OF ACTS AND REGULATIONS.

MR. HARINGTON moved that the Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure" be referred to a Select Committee consisting of Mr. Forbes, Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

SETTLEMENT OF ENAMS (BOMBAY).

MR. ERSKINE moved that Mr. Harington be added to the Select Committee on the Bill "to facilitate the adjustment of unsettled claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such revenue."

Agreed to.

TOBACCO.

MR. SETON-KARR gave notice that he would, on Saturday next, move the first reading of a Bill for the imposition of a Duty on Tobacco in the Provinces subject to the Government of Bengal.

BANKS.

SIR BARTLE FRERE moved that Sir Robert Napier be requested to take the Bill "to enable the Banks of Bengal, Madras, and Bombay, to enter into arrangements with the Government for managing the issue, payment, and exchange of Government Currency Notes, and certain business hitherto transacted by the Government Treasuries" to the Governor-General for his assent.

Agreed to.

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

MR. SETON-KARR moved that the Bill "for the Registration of Nij-jote and Khamar and other such lands as well as of ryottee tenures involving the immediate occupation of the soil for the purposes of cultivation or for other purposes" be referred to a Select Committee consisting of Sir Bartle Frere, Mr. Harington, Mr. Erskine, Sir Charles Jackson, and the Mover.

Agreed to.

The Council adjourned.

Monday Evening, September 2, 1861.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, Presiding.

Hon'ble Major General Sir R. Napier,
H. B. Harington, Esq.,
H. Forbes, Esq.,
C. J. Erskine, Esq.,
Hon'ble Sir C. R. M. Jackson,
and
W. S. Seton-Karr, Esq.

BANKS.

THE PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "to enable the Banks of Bengal, Madras, and Bombay, to enter into arrangements with the Government, for managing the issue, payment, and exchange of Government Currency Notes, and certain business hitherto transacted by the Government Treasuries."

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from the Madras Trades' Association, praying for an amendment of Act XIV of 1859 (to provide for the Limitation of Suits).

MR. FORBES moved that the above Petition be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

SIR ROBERT NAPIER moved that the Council resolve itself into a Committee on the Bill "to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I and II and Articles 1 to 47 were passed as they stood.

Article 48 was passed after verbal amendments.

Articles 49 to 53 were passed as they stood.

Article 54 was passed after a verbal amendment.

Articles 55 to 65 were passed as they stood.

Articles 66 and 67 were passed after amendments, on the Motion of Mr. Erskine.

Articles 68 to 72 were passed as they stood.

Article 73 was passed after an amendment, on the Motion of Sir Robert Napier.

The following new Article was introduced after Article 73, on the Motion of Sir Robert Napier:—

"Whenever any Native Troops subject to these Articles of War are not attached to the Forces of any Presidency, the Governor-General of India in Council shall authorize the Commander-in-Chief of any Presidency to issue his warrant to the General or other Officer having the Command of such Troops to appoint Courts Martial in conformity with this Article."

Articles 74 to 76 were passed as they stood.

Article 77 was passed after verbal amendments.

Article 78 was passed as it stood.

Article 79 was passed after an amendment, on the Motion of Sir Robert Napier.

Articles 80 to 88 were passed as they stood.

Articles 89 and 90 were transposed.

Article 91 was passed after a verbal amendment.

Article 92 was passed as it stood.

The following new Article was introduced after Article 92, on the Motion of Sir Bartle Frere:—

"Trials by Courts Martial may be carried on at any time without restriction. The hour of original assembly of the Court shall be named by the Officer convening the Court, but the adjournment of the Court and the hour of its re-assembling shall be determined by the Court itself.

Article 93 was passed after verbal amendments.

Article 94 was passed as it stood.

Articles 95 and 96 were passed after amendments.

Articles 97 to 101 were passed as they stood.

Article 102 was passed after an amendment.

Article 103 was passed as it stood.

Articles 104 to 108 were passed after amendments.

Articles 109 to 120 were passed as they stood.

Articles 121 and 122 were passed after verbal amendments.

Articles 123 to 146 were passed as they stood.

Article 147 was passed after a verbal amendment.

Articles 148 to 165 were passed as they stood.

Article 166 was passed after the inclusion of Article 81 among the Articles to be promulgated.

Article 167 was passed after the insertion in the blanks, (on the Motion of Sir Robert Napier) of the 1st November 1861, as the date from which the Articles should take effect.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

The Council adjourned at 6 o'clock, on the Motion of Sir Robert Napier, till Saturday the 7th instant.

Saturday, September 7, 1861.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere.	C. J. Erskine, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.
H. Forbes, Esq.,	

CRIMINAL PROCEDURE.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

RECOVERY OF RENT (BENGAL)

THE CLERK presented a Petition from the Landholders' and Commercial Association of British India, regarding the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)."

THE CLERK also presented a Petition from the British Indian Association relative to the same Bill.

MR. HARINGTON moved that the Clerk of the Council be requested to read the Petitions when the Council went into Committee on the Bill.

Agreed to.

INCOME TAX.

THE CLERK reported to the Council that he had received a communication from the Financial Department, forwarding papers and a Resolution of the Government of India thereon, relative to the working of the lump assessment in the cities of Allahabad and Benares.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON presented the Report of the Select Committee on the Bill "to amend Act XXI of 1860 (for the registration of Literary, Scientific, and Charitable Societies)," and gave notice that he would, at a later part of the day, move for a suspension of the Standing Orders, with a view to passing the Bill through all its stages to-day.

TOBACCO AND PAWN (BENGAL).

MR. SETON-KARR rose and said—

Sir,—In moving the first reading of a Bill "to provide for the imposition of a tax on Tobacco and Pawn in the Districts subordinate to the Government of Bengal," I think it necessary to explain briefly why the measure has been entrusted to me, instead of to one of the Honorable Members for Government. I have no doubt that the Honorable Member for Government, or the Honorable Mr. Laing, whose absence we all so much regret, would have introduced such a Bill with a far greater mastery over financial principles than I can pretend

to, but as I have carefully considered the confidential communications on the subject, and as I was present at the conference held by the Lieutenant-Governor with the experienced Members of the Board of Revenue, I shall endeavor, to the best of my ability, to give an explanation of the objects and reasons of the Bill.

The Bill forms part of a new scheme of taxation, in which the local Governments will be left to impose certain taxes and raise certain funds, in the manner and from the sources best suited to the peculiarities of the Provinces subject to its control. I believe, Sir, that I am violating no confidence in stating that this principle will be generally extended, and that a certain gap, to use the expression, will be left in the assignment for public works in the Imperial Budget, which will have to be filled up from purely local sources. I would suppose, for example, that one crore of rupees had been set aside for the public works of any Presidency: of that sum twenty lakhs would be deducted and defrayed by local taxation. Or, to use another form of illustration, each Government would be set down in the Imperial Budget for a certain sum for public works, which sum, when raised, would be re-assigned to the Presidency from which it had been drawn.

These being the general principles applicable to each Government, it is still left to the Governors of Presidencies to select their own subjects for taxation and to levy the proceeds in the way each Governor may think best. In this view, while looking for a fit subject to commence with, it had been deemed desirable not to press unduly on any one particular manufacture, or kind of produce, or branch of industry, or source of trade. And Tobacco had appeared to be just such a subject, as largely consumed by a great many classes. I shall not now stop to fix the precise point at which Tobacco ceases to be a necessary of life and becomes a luxury; nor shall I venture to decide the merits of a great controversy which took place about a year ago between some able leaders of the English press and an eminent physician: to lay it down, whether smoking is beneficial or injurious, whether it deadens or whether it refines the intellect, whether it enervates or whether it soothes and calms the frame. I would observe, however, that Tobacco, though of general, is not of universal, consumption; it is now wholly excluded from our jails; it is not touched, I believe, by one of the finest and most manly of all races in British India, the Seikhs; and there is no article of which the use increases more in ratio to the means of the consumer. It is sufficient, I think, for purposes of taxation, that the article is largely consumed by many classes, and that a tax on it can be imposed with fairness and, in some shape or other, be collected with certainty and ease.

I would here observe further, that nearly all the remarks I shall have to make will be as applicable to Pawn as to Tobacco. Few Honorable Members but may have noticed a Pawn garden in a morning drive outside Calcutta. The garden is closely matted in, not only on all four sides, but at the top, so as to exclude the hot rays of the sun. But in taxing Pawn there is no present intention of taxing the Betel or Areca nut, which is grown in gardens of a totally different description.

If I were myself to hazard an opinion about the use of Tobacco, I should say that it held a middle place between Salt and Opium. Salt is a positive necessary used by the very poorest classes. Opium is a drug or medicine, it is largely exported from this country, or is only consumed within it by certain persons, or in moderate quantities. In considering the way in which the tax on Tobacco should be levied, three methods had suggested themselves to the consideration of the Government of Bengal. The first was to make use of the adequate establishments already existing in several districts for the cultivation of the Poppy and the manufacture of Opium. There is a large Staff of Agents, Deputy Agents, and native subordinates, whose skill and experience could readily have been turned to account in those Districts where Tobacco is cultivated as well as the

Poppy. Had it been determined to introduce or extend this system, I could have had no doubt whatever of its ultimate, or even its immediate financial success. We should have had the same system of well regulated advances under the guidance of able and practised officers; the same assiduous culture by agriculturists who would have been quite free to take advances or to leave them; the same extent of reasonable supervision; the same skill in manufacture and care in transport; and, finally, the same direct profit to Government and to the cultivator, which will, I trust, be the invariable result of a sound system, conducted on the true commercial principles of mutual dependance and mutual interest.

But this system would have required an extension of Establishments, to other districts in which Tobacco and not the Poppy is grown. There would have been a great outlay in salaries, and in the erection of manufactories, drying and store houses, and the like, which outlay the Government could now ill afford; and the system, at best, could only have been known to the community by that word "monopoly," so jarring and unpleasant to English ears. The existence of two other monopolies in our financial system appears to me the very reason why we should not, at this period of our rule, be seeking to establish a third, and I may be pardoned for saying that I hardly would wish the Government to attempt a monopoly of a good administration: even here I would advocate the principles of free trade, and would desire to see any British Government only the first of competitors in a race, where the prizes must eventually fall to a vigorous and just administration which is based on wise and well-considered laws.

The next method which was suggested, was to license the sale of the manufactured article; and this method had certainly some features which merited attention and promised success, while it had none of the inconveniences attending a monopoly. It would not, on that score, have engendered secret discontent: it would not have again presented Government to the eyes of the community in the shape of a huge trader, who, holding the scales of commerce in one hand and wielding the staff of authority in the other, appeared to regulate and influence the market, to direct the administration of justice, and to amend the law, as best suited his interests; and it would not have afforded an unfailing point of attack to the assailants of the present or of future Governments, in India and England. The manufactured article is exposed for sale in bazaars, by dealers of certain classes, and could, in such places, be easily reached by the tax-gatherer. But if the license were to be a mere license to sell the article without reference to its quantity, the tax would be very unproductive: while, if there were any attempt to graduate the scale of licenses, and to distinguish between the wholesale and the retail dealer, a door was at once opened to endless fraud, evasion, enquiry, and annoyance. This had been thought likely to be the case in the discussions regarding the original License Bill, within which it was once proposed that Tobacco should be included. Then there was the danger both of active opposition and of sullen and passive resistance. Instances of combination by the communities of large cities, which take the form of shutting up all the shops and of refusing all supplies, are not unknown in Indian history, and I believe the Honorable Member for the North-Western Provinces must have heard or known of several such instances in the course of his career. In one case, indeed, the population of a large city, on some trifling cause of complaint, has been known to walk out into the fields, bag and baggage, and actually to have spent a fortnight in the open air. In addition to this danger, there was fear lest taxation in towns and bazaars might lead to extensive smuggling, and to secret sale in the interior of the districts, so that we might have largely to increase our preventive establishments, and to depute the tax-gatherer into the inmost recesses of rural villages. On the whole, then, the system of licensing

the manufactured article was, in Bengal at least, not thought worth a trial.

There remained, Sir, the third plan of taxing the plant under cultivation, according to the area and extent. This has none of the odium which must be encountered by a monopoly, and is not so much exposed to the dangers arising from combination. Tobacco is grown in particular districts, and in particular parts of particular districts, which are well known to the local authorities. The plant is cultivated mainly by substantial ryots. When growing, it is very easily recognized and can scarcely escape research. Combination amongst agriculturists, scattered in different villages, would be very unlikely, and the grant of licenses would enlist those who had paid the money, on the side of Government, and would lead to the speedy detection of those who had not. The demand of a higher rent on the more valuable kinds of produce is already familiar to the ryot, and he almost always pays more to his zemindar for land cultivated with sugar-cane, mulberry, or tobacco, than for lands covered with rice plants. But it is not on this ground that I defend or base the tax, though the above facts may familiarise the ryot with it when first brought into existence. The ryot is quite sharp enough to perceive that the incidence of taxation *must* fall on the consumer, and that he has only to add the cost of the license to the price of the plant, in order fully to reimburse himself. Here, Sir, I trust that I shall not be met with any objections to the tax on the ground that it "infringes the Perpetual Settlement." No settlement, that I know of, permanent or temporary, has ever been made with those who smoke Tobacco, any more than with those who drink country spirits, or eat *gunja;* and yet it is on tobacco-smokers that the incidence of this taxation must eventually fall. Of course, there will still be the danger of smuggling, whether by land or sea, but this is almost the only real danger to which this mode of collection is exposed. No mode could be devised against which some objections could not be brought, and the taxation of the plant under cultivation has the acquiescence of the best and most practical public officers.

I shall now, Sir, proceed to explain the details of the Bill. From certain documents appended to the Report of the Indigo Commission, it is shown that the produce of Tobacco varies from about fifteen Rupees to forty Rupees or even fifty Rupees a beegah. The fair average is about twenty-five Rupees. These documents had been compiled from returns given by official and unofficial gentlemen, and had every guarantee for accuracy. It had, therefore, been thought that a tax of five Rupees a beegah or of four annas per cottah on such a return, would not be excessive. This is the amount proposed to be fixed by the Bill. With regard to the article Pawn, the information is still incomplete, though enquiries are now being carried on; but from what has transpired hitherto, it is thought that double the rate charged on Tobacco will not be immoderate, or eight annas a cottah. There are provisions with heavy fines against illicit cultivation, and the agency of the zemindars, talookdars, and under-tenants, and their naibs and servants, is here called into play. A penalty of five hundred Rupees is proposed for neglect to give information to the nearest Magistrate, or the nearest police officer; and police officers themselves are also made responsible for early information under somewhat similar penalties. The language of the Opium laws has been here introduced bodily. They are well known: they are very stringent: and their very stringency has prevented all attempts at evasion: while the penalty, from its mere severity, has very rarely been imposed. A provision is also made for the grant of one half of the penalty to the informer, and for an appeal in all cases of fine: the cases, moreover, being decided by Courts or officers not in any way connected with the tax or its collection.

Then comes a Section, which, whatever may be the feelings which the other parts of the Bill may excite, will, I hope, be regarded with unmixed

gratification. An annual statement of the gross proceeds of the tax, of the cost of collection, and of the expenditure thereof in public works, must be published, for all persons to see, in the Official Gazette at the close of every year. As regards the chance of smuggling, I have perused with interest a valuable communication furnished to the Lieutenant-Governor by my friend the Honorable Member for the North-Western Provinces, pointing to the difficulties of preventing the import of Tobacco. If the Tobacco tax should be established in Oude and in the North-Western Provinces, there will be little temptation to smuggle Tobacco into Behar or Bengal. Should it not be established, the remedy will be to re-organize the old Customs Line which guarded the importation of salt from Allahabad into Behar. As regards the Eastern Frontier, it will be not more difficult to watch the importation of Tobacco from Nepal or from the Hill countries, than it is now to watch the importation of Opium. There will certainly remain the country which borders on the Madras Presidency towards Ganjam, and the whole line of the South-West Frontier Agency. But in regard to this I can only say that the local Government must be prepared to use the means at its disposal and, if necessary, to increase the means and the agency to the requisite efficiency.

In regard to smuggling by sea, the importation of foreign Tobacco is already sufficiently met by the existing Customs laws. As regards Tobacco brought from any Indian port to Calcutta, it must be remembered that by an Act passed in 1848 all Indian ports are declared to be one and the same, and it has therefore been thought expedient to introduce into the Bill a provision, empowering the Government to tax Tobacco imported from Madras, Bombay, or any other Indian port, at rates corresponding with those imposed on the cultivation of the plant by the present enactment. In short, whatever may be the dangers to be apprehended from smuggling, they are not such as to bar the present experiment; the Government must be prepared to meet the smuggler wherever he may show himself, by land or water, as best it may.

These, Sir, are the main provisions of the Bill, and I believe that it will have the merits of harmoniousness and of expediency, as well as of productiveness. Under the sanction conveyed by the Governor-General in Council, it will be in harmony with the new system which has been lately inaugurated, and which, if financial questions were formerly a sealed book, will soon, I trust, leave them an open letter. It will place at the disposal of each Government a sum drawn from its own Provinces and its own subjects, in the mode best suited to their social peculiarities, and will enable their ruler, while he imposes the burdens, to confer, at the same time, a larger portion of benefits. It will be a guarantee to the community that the sum raised from their industry, their profits, and their increasing wealth, shall no longer be swallowed up in the unseen abyss of the Imperial Treasury, but shall be spread widely over the face of the country in visible and tangible works, either improving the natural communication by water, or rendering the existence of a four-wheeled carriage in the very heart of a Bengal district no longer an impossibility or an absurdity: saving us from the danger of too much water or of too little; preserving sheets of cultivative and fertile plains teeming with every kind of produce from threatened inundation, or again, creating fruitful water-springs in a dry and barren ground.

It will be the first attempt at local taxation on a more extended scale than the taxation of ferries, or of roads, or of the inhabitants of towns and cities, for mere purposes of conservancy and police; but I sincerely hope that, if the first, it will be only the first in a long series of experiments, in which the administrators of other Provinces may obtain a signal triumph over repugnance to taxation, and may exhibit a fertility of expedients, a skill of resources, and a power of adapting means to ends, in a third field, besides those two in which administrative qualities have

Mr. Seton-Karr

hitherto shone conspicuous; a field other than the establishment of revenue systems on broad and comprehensive principles, or than the pursuit, detection, and punishment of crime.

SIR BARTLE FRERE said, he believed the first reading of this Bill required to be seconded. In doing so, he would take the opportunity of stating that it was part of a general measure only in so far as it was one of those schemes of local taxation which was described by Mr. Laing in his Budget Speech in April last, when he said that it was proposed to leave to the local Governments to tax those sources of Revenue which could not conveniently or properly be made subjects of Imperial taxation. Tobacco was one of these objects of taxation, which, after very detailed enquiry, it was found impossible to deal with as the subject of any general measure, and it was one which the Lieutenant-Governor of Bengal considered likely in this particular Province to prove most fruitful. It was not, however, the intention of the Government of India to introduce any general measure for the taxation of Tobacco throughout India. It might be peculiarly applicable to Bengal, but must not be taken as a safe precedent to follow in other parts of the country. With these remarks he begged to second the Motion for the first reading of the Bill.

The Motion was carried and the Bill read a first time.

LIMITATION OF SUITS.

THE VICE-PRESIDENT moved the second reading of the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits.)"

MR. HARINGTON said, referring to the somewhat prominent part which he had considered it his duty to take in opposition to the Bill introduced into this Council in the month of April last for suspending the operation of the Act which the present Bill had been brought in to amend, he deemed it right at once to rise and say that it was not his intention to oppose the Motion for the second reading of this Bill. With the permission of the Council, he would briefly explain his reasons for the course which he considered it proper to adopt in respect to this Bill. The Bill had been introduced by the Honorable and learned Chief Justice of Her Majesty's Supreme Court at Calcutta, who was the highest judicial authority in India, and he was so, not only from the high position which he held, but also from his eminent talents, his profound legal knowledge, and his large experience. From long practice at the bar and as a Judge, the Honorable and learned Chief Justice, who had brought in this Bill in his capacity of Vice-President of this Council, must possess a practical acquaintance with the subject of the law of limitation and with the working of that law, far beyond any other Honorable Member of the Council except the Honorable and learned Judge opposite (Sir Charles Jackson), and he must be well aware of the practical bearing and effect of the legislation of 1859 upon the class of suits to which the present Bill related. The Honorable and learned Vice-President having then taken upon himself the responsibility of introducing this Bill, and having strongly recommended the Bill for their adoption, he (Mr. Harington) felt that the Bill was not one which could be lightly treated by this Council. Whatever might be the views of individual Members, he did not think that the Council would be justified in throwing out the Bill upon the motion for the second reading, or without further enquiry. Whatever might be the ultimate fate of the Bill, it seemed to him that the Bill deserved at the hands of the Council full and careful consideration.

Like the Honorable and learned Vice-President, he had had the honor of being waited upon by a deputation consisting of the Master and several Members of the Calcutta Trades' Association, who had discussed with him in temperate language and in a candid and intelligent manner what they regarded as the defects of the present law and the necessity which appeared

to them to exist for a change in it, such as that proposed in the present Bill. He felt very much obliged to these gentlemen for coming to see him and for the information which they had given him. He thought it was much to be regretted that public bodies like the Calcutta Trades' Association and others interested in matters which formed the chief subjects of legislation in this Council did not communicate more frequently with the Members of the Council. He ventured to assure them, on the part of the Members of any Council that might be established in the place of the present Council, ready access at all times and, at least, a patient hearing. Much public benefit must result from such communications. They would often prove the means of removing misunderstanding and of imparting valuable information to the Members of the Council, not perhaps otherwise attainable, and which Honorable Members would find most useful in the discharge of their important functions. Had the Calcutta Trades' Association bestirred themselves when the Bill which was now Act XIV of 1859 was republished in the early part of 1859 for two months for general information, and had they then represented to the Council what had been urged by the Members of the Association in their recent interviews with the Honorable and learned Vice-President and himself, it was quite within the limits of possibility that the result might have been to obviate the necessity of further or fresh legislation at this time. He would not allude to the neglect of which he thought that it must be admitted the Calcutta Trades' Association had been guilty at the time to which he was referring, namely when the original Bill was under consideration, further than to say that any laches committed by the Association at that time would not of itself constitute a sufficient reason for refusing relief now if any adequate cause for altering the law could be shown to exist. He was much influenced in the course which he was at present pursuing by the consideration that the Act of 1859, as orginally framed by the Law Commissioners, and as read a first and second time in this Council, proposed to allow six years as the period of limitation for the institution of suits of the nature of those referred to in the present Bill, and that the period was reduced to three years when the Bill was passing through the Committee of the whole Council. The Calcutta Trades' Association had, therefore, high authorities in support of their objection. They had also succeeded in making a convert of the Honorable and learned Vice-President, which was another very strong point in their favor. With regard to himself, he was not prepared to admit that the arguments employed by the gentlemen who waited on him, or the facts stated by them, had carried conviction to his mind or satisfied him that the part of the Act complained of by the Calcutta Trades' Association was wrong and ought to be altered; but he was bound to acknowledge that his confidence in this particular part of the Act was not as great after his interview with these gentlemen as it was before. Against the present Bill there was the fact that, although the law of limitation in respect to Bills for articles sold in retail might be six years in England, in Scotland it was only three years, and in France it was only one year, and they were not told that in these two countries the shorter periods of limitation allowed caused any inconvenience or were found to be too short to admit of tradesmen recovering their just dues by process of law, if necessary, or that trade was injuriously affected in consequence. For his own part he should have thought that quick returns which the present law was calculated to promote, must be much more advantageous to tradesmen generally than the present system of long credit which often necessitated and, it could not be denied, did lead to exorbitant prices and, he presumed, fewer sales, and proper provision being made for keeping claims alive and in the case of absence from the country, on both of which points he believed that the Act

Mr. Harington

of 1859 contained ample provision, the effect of the shorter period of limitation must, he should have supposed, be to strengthen instead of weakening the hands of tradesmen in recovering the amount of their bills from dilatory customers. He had suggested this to the Members of the Calcutta Trades' Association who had waited upon him, but he was surprised to find that they did not agree with him. Then, he wished to call attention to the fact that notwithstanding the discussion which took place in this Council and in the newspapers in April last, when it was proposed to suspend the introduction of Act XIV of 1859, the Calcutta Trades' Association stood alone for some time in their opposition to the Section to which the present Bill referred. After a time a Petition, by no means numerously signed, had been received from Benares, and now at this late period a Petition had come in from the Trades' Association at Madras. So late had this Petition been received that copies of it were not yet in the hands of Honorable Members; at least he had not received a copy. He had not read the Petition from Madras, but looking to the length of time which had been allowed to elapse before that Petition was presented, he was led to think that it had been given in now very much because the Madras Trades' Association considered themselves bound to stand by their Calcutta brethren. From the Bombay Trades' Association no complaint of the Act had been received, and the Council were justified in inferring from their silence that they did not agree with the Calcutta Trades' Association. With exception to Benares, none of the large towns in the Mofussil, if he recollected rightly, had petitioned against the particular Clause of the Act to which the present Bill related. One of the Judges of the Sudder Court at Agra had written to him to say that he was very averse to extending the term of limitation beyond what was provided by the Act; and a high judicial officer in Oude had expressed a hope that the Council were not going to let the limitation Act XIV of 1859 be knocked on the head all over India because the old system most suited the interests of some one class. The general opinion in the Mofussil certainly seemed to be in favor of retaining the Act as it now stood, and if it should appear that there was really no general desire for a change, he thought that the Calcutta and Madras Trades' Associations could scarcely expect this Council to alter a very important provision of the law simply to meet their convenience. He was prepared to admit that a case had been made out for enquiry, but, at present, not for more than enquiry; and he would therefore vote for the second reading of the Bill in order that it might be published for the information of the public. This was the only way in which they could elicit an expression of public opinion upon the Bill. Under the Standing Orders of the Council, a Bill must be read a second time before it could be published, but in voting for the second reading of the Bill he must not be understood as affirming its principle or as admitting its necessity. He was glad to find that the present Bill was not open to what appeared to him to be one of the greatest objections to the Bill which was introduced in the month of April last. He had always thought that that Bill went far beyond the necessity of the case. All that the Calcutta Trades' Association asked for was, not a suspension of the entire Act XIV of 1859, but simply that a particular Section of the Act might be modified. Nevertheless, on this application, the Council had suspended the operation of the whole Act for a period of nearly eight months,—and then he would ask them to consider the circumstances under which the suspension had taken place. It was directed at a time when only a very small section of the community could take advantage of it. In fact, the suspension was known in time to be of use only to the inhabitants of Calcutta and its immediate neighborhood. Meanwhile hundreds, nay thousands of suits had been instituted in all parts of the country. The parties who brought these suits, when they heard what had been

done, and found that had they only waited a little they might have deferred the institution of their actions for several months, were naturally dissatisfied, and complained that the same opportunity had not been given to them which had been afforded to others. But this was not all. When the Bill introduced in April last was under consideration, he ventured to point out to the Council that, if they acted as was then proposed, they would shake the confidence of the public in the legislation of the Council, and would lead the public to think there was no certainty in the laws passed by them,—and such had really been the effect of the Bill to which he was referring. From more quarters than one he had received letters asking what were the intentions of the Council in respect to Act XIV of 1859, and whether it was intended that that Act should really come into operation on the 1st January next. In the uncertainty that prevailed as to what might be the future law of limitation, those who had suits to bring did not know what to do. The Council having at the last moment suspended the operation of the law on one occasion, it was felt that the same thing might occur again, and he might mention that an application had been made to the Honorable the Lieutenant-Governor of the North-Western Provinces, in which he had been asked to put forth some proclamation which should have the effect of assuring the public mind on the point, and of removing the present feeling of doubt and uncertainty. But the Honorable the Lieutenant-Governor could not, of course, know what were the intentions of this Council, or what they might do. He (Mr. Harington) hoped that the fact of the present Bill being confined to a single Clause of Act XIV of 1859 would satisfy the public that there was no intention of altering any other part of the Act, and that the rest of the Act would really take effect from the 1st January next. It had been alleged that the large number of suits which he mentioned to have been instituted just before the date fixed for Act XIV of 1859 to come into operation, showed that he (Mr. Harington) was wrong in the grounds of his opposition to the Bill brought in to suspend the operation of that Act in the month of April last, and an inference had been attempted to be drawn from the fact of the large number of institutions unfavorable to the Act and as indicating a general dislike to its provisions throughout the country. But he contended that the number of suits instituted at the period referred to afforded no ground for either the allegation or the inference just mentioned. If the large number of suits brought just before the time originally fixed for Act XIV of 1859 to come into force, proved any thing, it proved this, that the people throughout the country were perfectly acquainted with the requirements of the law and that they were careful to conform to the same. Perhaps he might be asked why, if the people did not dislike the Act, they waited until almost the last moment before bringing their suits. The answer which he would give to this question would be that those who asked it, could know very little of native character. The people were aware that up to a certain time they were quite safe, and they saw no reason for bringing their suits before. Had twelve years been allowed instead of the period mentioned in the Act, exactly the same thing would have happened. Those who had had any experience in the Civil Courts in this country must have observed that the great majority of cases were not instituted until the period of limitation allowed by law was on the point of expiring. He did not know that this dilatory habit was confined to the people of India. He found from a paper which had been sent, he believed, to every Honorable Member of this Council, that a highly respectable and very intelligent European gentleman, Mr. Hills, had similarly deferred the institution of the suits which he wished to bring until just before the time fixed for Act XIV of 1859 to come into operation. Had he known in time of the suspension of the Act, he doubtless would have waited as others had done

but he had told the Council that the information reached him too late to admit of his acting upon it. He (Mr. Harington) must repeat that no inference unfavorable to Act XIV of 1859 could fairly be drawn from the number of institutions towards the end of April and in the early part of May last. All that the fact of those institutions showed, as he had said, was that the people generally were well aware of the provisions of the law, and that those who were interested in complying with its requirements, took very good care to keep within the law.

MR. SETON-KARR said that he would offer no opposition to the second reading of the Bill. He had not the honor of a seat in Council at the time of the first reading, but he had taken the trouble to make himself acquainted with the able arguments then advanced on both sides. He was not sure, however, whether these changes from twelve to three years, and then back again to six, tended to inspire confidence in our legislation. In reply to two gentlemen of the Trades' Association, he had certainly said, in a general way, that he had no great disinclination to see six years established, but the present Bill rather split the principle into two; it expressly excluded suits for the hire of animals, vehicles, boats, or household furniture, as well as suits for rents for any buildings or lands. He quite conceived that good reasons might be given for this division, but, as the Bill stood, Messrs. Cook and Co. or Messrs. Hunter and Co. would have to sue in three years, while other tradesmen could have their time enlarged to six years. With these remarks he should not oppose the second reading.

MR. FORBES said that he had no intention of doing otherwise than voting for the second reading of this Bill, but the remarks which had been made by his Honorable friend the Member for the North-Western Provinces, regarding the inconveniences that had arisen when the limitation law was suspended in April last in consequence of all but those living in Calcutta having been obliged to bring their suits to suit the terms of the then existing law and in ignorance of any intention to suspend its operation, led him to wish to suggest to the Honorable and learned Chief Justice that some arrangement should be made to prevent the occurrence of similar inconvenience on the present occasion. In Madras the inconvenience referred to had been felt no less than elsewhere, and in their annual report on the administration of the year, the Government had accounted for a great increase in the Stamp revenue by referring to the number of suits which had been brought towards the end of April in anticipation of the new law of limitation coming into operation.

Now if the present Bill were to pass a second reading to-day, without pretending to make a very exact calculation, he might say that the three months for which it must, under the Standing Orders, be published, would not have expired till the 7th of December, a Select Committee could not report upon it till the 14th, it would not pass through a Committee of the whole Council till the 21st, nor be read a third time and passed till the 28th, or only three days before the present law of limitation would, but for the passing of this Bill, come into operation, and it was obvious that parties out of Calcutta would be in precisely the same position as they were in April last, and would be obliged to bring their suits in ignorance of whether the present Bill would become law or not.

SIR ROBERT NAPIER said, he intended to vote in favor of the Bill introduced by the Honorable and learned Vice-President, because he had learnt from various sources that it would materially affect the interests of a large portion of the commercial community in India. He could not pretend to go into the whole history of the case; he could only view it by such light as common sense could throw upon it. What was the purpose of a law of limitation? The Honorable and learned Vice-President had explained clearly that it was to protect the purchasers of goods from demands being brought against them after such a long period of time that

proof of those demands having been already satisfied, might have passed away. He (Sir Robert Napier) could see no other object of such a law. In England six years had been found a proper limit, and the reasons for having such a long period there existed tenfold in this country. Various reasons had been given why the Act should not be altered. Some theoretical objections had been made regarding short credits and low prices. The Honorable and learned Vice-President, however, showed, the last time that the subject was discussed in that Council, that credits and prices could not be affected by it; but if they could, it had long ago been settled that the best thing you could do for trade was *to let it alone.* It was also urged that the objections to the law had come in at too late a period to be attended to. He thought that the Council ought to be very much obliged to the gentlemen who had come forward even at the eleventh hour to prevent them from perpetuating an inexpedient law. It had also been said that, if the Act were altered, it would shake the confidence of the public in the Council. But our laws were not like the laws of Darius. On the contrary, if a law was found to work badly and a Government, after listening patiently to complaints against it, altered it for a better one, such a proceeding would increase rather than diminish the confidence of the public. He should, therefore, gladly support the Honorable and learned Vice-President's Bill.

SIR BARTLE FRERE said, he had very little to add to what had been said by Honorable Members with regard to this Bill, as it was his intention to vote for the second reading. He had only one point to notice, in the hope that it would elicit the opinion of the Honorable and learned Vice-President, so as to enable parties at a distance to make up their minds on the subject. He believed that no such provision as a limitation of suits was known in the Common law, and that it was therefore only a matter arranged by Statute, and the period of limitation was essentially an arbitrary one. He had gone through the discussions on this subject, and could not meet with any statement of the reasons why the period of limitation was originally changed from twelve years to three, nor why it was now intended to revert to six. He confessed that, if they were now legislating on the subject for the first time, he should have been inclined to agree to the period now proposed, and to consider that the period which was in force within the limits of the Supreme Court and which was shorter by half than the period obtaining in the Mofussil, was a good period to fix as an experimental measure. But it was a different matter when the period of three years had been deliberately fixed, and he should like to know the reasons both for preferring three years to twelve years in the original Bill, and also for now reverting to six. He thought it would be satisfactory both to the Members of this Council and to parties at a distance to know the views of one or both of the Judges on the subject. There was another point which he hoped would not be forgotten. It had been referred to by the Honorable Member for Madras who had observed that the publication of the Bill for three months, according to the ordinary course, would bring us to the end of the year when the new law of limitation would come into operation. Probably two months would be sufficient to allow for the publication. It was only in the Presidency towns, and the larger towns in the interior, that opinions might be expected to be expressed with regard to the Bill, and for this purpose two months would be amply sufficient.

MR. FORBES said, he would beg leave to suggest to the Honorable and learned Chief Justice to introduce a Bill and to pass it through all its stages to-day, to extend for a period of six months the operation of the Section to which his Bill particularly referred.

THE VICE-PRESIDENT said that, if Honorable Members were willing to pass such an Act, he was quite prepared to introduce it, but that must be

done to-day. Or he was quite ready—though he was not sure if the Council would agree to such a course—to suspend the Standing Orders and pass the present Bill at once. He did not think that those persons who had commenced their suits would be injured by such a measure, or that they would be throwing away their money by having brought those suits which must in ordinary course be tried and determined. The great difficulty in this case in point of time was in regard to those persons who would be in uncertainty whether to commence their suits or not, such as the tradesmen in Calcutta, who would be obliged against their wishes to institute their suits against their creditors, otherwise their actions would be altogether gone.

With regard to what had fallen from the Honorable Member of Government, he could only inform him that there was no fixed period of limitation of suits in Common law. The Government provided Courts to administer justice between party and party, and a person might go into Court at any time. But to prevent creditors from laying by their claims until the debtors might have lost their receipts for the payment of those claims, or when the witnesses to the transaction might be dead, a law was passed which provided that suits should be brought in such cases within six years after the cause of action had accrued. Honorable Members would bear in mind, moreover, what he had observed before, that the cause of action did not accrue till the time of credit given had expired, whether that time was twelve years or twenty. Therefore a law of limitation had nothing to do with the question of giving credit.

With regard to Act XIV of 1859 it was brought in by Sir James Colvile and published in 1855. It was allowed to lie over four years before it was taken up by the Council. The period of limitation in respect of retail bills was originally fixed at six years, which was subsequently reduced to three years. Although the Bill was passed in 1859, or, as he had said, four years after it had been introduced, it was not allowed to come into operation till after two years, *i. e.*, till 1861. Shortly before the time fixed for the commencement of the Act, some gentlemen connected with trade came forward and represented that they had just become aware that the Act was to come into force, and that they would have no time to communicate with their debtors scattered all over India, and that they would be unable to recover their claims without immediately instituting actions against them. The Council, therefore, suspended the operation of the Act, and in so doing did, he thought, perfectly right, although he (the Vice-President) was not there then to justify what had been done. If the Council had not done so, lakhs and lakhs of Rupees would have been lost to the trading community. The Honorable Member for the North-Western Provinces had said that the suspension of that Act had caused a great want of confidence in the legislation of the Council. He (the Vice-President) would ask the Honorable Member, who were the persons who had been damaged by it? The only persons said to be damaged were those who had been obliged to bring actions, and how were they damaged? They had brought their actions, and recovered their dues. The only injury of which they could complain was that they had not had the opportunity of postponing their actions.

MR. HARINGTON here interrupted the speaker and said that the want of confidence which he mentioned as having been caused by the legislation of April last, was felt not so much by those who, supposing Act XIV of 1859 would come into force upon the date fixed for its taking effect, had brought their suits accordingly, but by those who had suits to bring. In the uncertainty which prevailed as to what might be the future law of limitation, they did not know what to do; whether they should bring their suits, or defer the institution of them.

THE VICE-PRESIDENT resumed. He thought that people ought to know that an Act would come into force on the date when it was stated it would come into force. He did not think that

people would feel a want of confidence in the Legislature when it found that it had passed an Act which would operate unjustly, and suspended it. He did not think that there ought to be any want of confidence in the Legislature when the people found that the Legislature was carefully watching over the interests of those for whom it was bound to legislate. Now, what was the hardship referred to by the Honorable Member for the North-Western Provinces? It could not have been the suspension of the law, but the law which had been suspended. The Honorable Member had said that these persons complained because they were obliged to bring their actions within three years, and yet the suspension of the Act which required their actions to be brought within that time was spoken of as a great hardship.

MR. HARINGTON here remarked that what he meant to say was that the parties who, not knowing of the suspension of the Act, had brought their suits within the period prescribed by law, contrasted their case with those who, being aware of the suspension of the Act in time to take advantage of the suspension, had obtained a delay of nearly eight months, and the result was a feeling of dissatisfaction. These persons felt that the same advantage ought to have been allowed to all or to none.

THE VICE-PRESIDENT resumed. He thought that that was a very vague ground of complaint. It was in the nature of the "dog in the manger" to complain that others were not obliged to bring their actions as they had been. Besides, when we suspended the Act, those people were at liberty to proceed with their actions if they chose. All that they could say was that they were obliged to bring their suits sooner than they wished. The Honorable Member for the North-Western Provinces observed, however, that people in this country, as every where else, did not like to bring their actions until the very last moment, a clear proof that they did not want the period to be shortened. But however that might be, that was what had been complained of, and that was what he proposed to alter by the effect of this Bill.

As to what should be the fixed period of limitation, that was a matter in which those persons who were engaged in commercial pursuits were the best judges. We had been told by the Trades' Association in Calcutta that, if we reduced the period to three years, we should be doing a serious injury to trade. We were now told the same thing by the Trades' Association in Madras. Now these gentlemen, who were engaged in trade, concurred in saying that three years was too short a period. They were not similarly circumstanced in India as they were in England, where they were represented in the House of Commons. He thought that this Council should listen, and willingly listen to, and take the advice of—he did not mean to say, be implicitly guided by—those persons engaged in a particular business who would be affected by any particular law. He did not think that we should stand by our own knowledge of things. Now what was the particular hardship in extending the period from three to six years? None had been proved. On the other hand, the Petitioners had pointed out that, if we did not alter the period of limitation, we should be doing them a serious injury. We ought, then, to listen to their complaint, unless we found that, by altering the law, we should be doing injustice to others. Looking to the law in England where the period of limitation was six years, and where less difficulties existed, he did not think that any one would be injured if we increased the period from three years to six years which was already the law in the Presidency towns, and which was still the law in England.

With reference to the remark of the Honorable Member for Bengal, he would merely observe that the hiring out of buggies and horses or boats stood on quite a different footing from goods sold by retail dealers. The Honorable Member had said that Messrs. Cook and Co. would be barred from bringing their suits after three years, whereas Messrs. Wilson and Co. would

not be so barred. But Messrs. Cook and Co. had not represented that they would be injuriously affected by it, and therefore the Council might very well conclude that three years was ample time for the recovery of money due for the hire of buggies and horses and boats. So also as to rents of houses; no one had pointed out that three years was too short a limitation, besides which, the landlords in Calcutta had the law entirely in their own hands, and could take out a distress-warrant whenever their rents were not paid.

Under these circumstances he saw no objection to the alteration of Act XIV of 1859 as proposed by this Bill. But, as pointed out by the Honorable Member for Madras, if the Bill were proceeded with in the usual course, its publication would not expire so as to enable the Council to pass the Bill before the 14th of December next. Even if the publication was to be for two instead of three months, should there be any delay in the opening of the new Council, the Petitioners would not know how to act if Act XIV of 1859 were allowed to come into operation, as it now stood, on the 1st of January next.

He proposed, therefore, to refer this Bill, if it passed a second reading to-day, to a Select Committee in view to its publication in the Gazette, leaving it to the new Council to deal with it as they thought proper; and if Honorable Members would give him their support, he would at a later part of the day move for a suspension of the Standing Orders to enable him to introduce and pass through all its stages forthwith a Bill to postpone the operation of so much of Act XIV of 1859 as related to retail bills.

The Motion was then put and carried, and the Bill read a second time.

STAMP DUTIES.

MR. HARINGTON moved the second reading of the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)."

The Motion was carried, and the Bill read a second time.

FLOGGING.

The Order of the Day being read for the third reading of the Bill "to provide for the punishment of flogging in certain cases"—

MR. HARINGTON moved that the consideration of this Bill be postponed till after the consideration of the other Bills which stood in the Orders of the Day.

Agreed to.

MALACCA LANDS.

MR. HARINGTON moved that the Bill "to regulate the occupation of land in the settlement of Malacca" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

PORT BLAIR.

MR. HARINGTON moved that the Bill "to regulate the administration of Port Blair and other Settlements in the Andaman Islands" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MERCHANT SEAMEN.

MR. FORBES moved that the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ARTICLES OF WAR.

The Order of the Day being read for the third reading of the Bill "to consolidate and amend the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army"—

SIR ROBERT NAPIER moved that the Bill be re-committed to a Committee of the whole Council for the purpose of considering certain proposed amendments therein.

Agreed to.

The Bill passed through Committee after amendments in Articles 78, 79, and 89, and, the Council having resumed its sitting, was reported.

SIR ROBERT NAPIER then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

RECOVERY OF RENTS (BENGAL).

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The two Petitions, which were presented to-day, having been read as usual by the Clerk of the Council —

MR. HARINGTON said, as he understood that there was no intention of pushing the Bill to which the Petitions just read related, through the Council to-day, he would now move that those Petitions be printed.

THE CHAIRMAN said that, as the Bill was not to be passed to-day, it appeared to him that it would be better to postpone the further consideration of the Bill until the Council had an opportunity of considering the Petitions.

MR. SETON-KARR said, with regard to the two Petitions which had just been read, that he wished to state that an amendment imposing a penalty of twenty-five per cent. on any sum decreed as rent, when such rent had been withheld on frivolous and absurd pretexts, had been already prepared by himself, and had been laid before the Council. It had the approval of the Lieutenant-Governor of Bengal, and, if passed, would certainly remove one of the objections taken in the Petitions.

MR. HARINGTON suggested that the Sections objected to by the Petitioners might be adopted to-day merely *pro formâ*. This would dmit of thea Bill being republished for general information, and they might hereafter take into consideration the objections urged by the Petitioners to the amendments proposed by the Select Committee on the Bill together with any other amendments which might be considered necessary. He believed he was right in saying that, under the Standing Orders, amendments proposed by a Select Committee could not be regarded as forming part of a Bill until they were ordered to stand part of the Bill to which they related by a Committee of the whole Council.

THE CHAIRMAN said, he did not think that the Council could go into Committee upon the Bill and pass the Sections *pro formâ*, and then allow the Bill to be republished without leading it to be supposed that the Sections had been adopted by them. That was a course which he could by no means approve, particularly after the Petitions which had just been read. The better course would be to postpone the Bill until after the objections taken by the Petitioners had been fully considered. He could understand the first part of Section III, which provided :—

"When rent is payable by an under-tenant or ryot at a certain rate or rates according to the quantity of land held or cultivated by him, and such under-tenant or ryot is not restrained by express agreement from requiring a measurement of such land, and shall have given notice to the person to whom the rent of such land is payable that he requires the same to be measured, and such person has refused or neglected to make or to be present at such measurement, such under-tenant or ryot may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under the said Act X of 1859, and shall pass an order either allowing or disallowing the measurement, and if the case so require, enjoining attendance of such person, or excusing his attendance."

But the Section went on to say—

"If such proprietor, after the issue of an order enjoining his attendance, neglects to attend either in person or by agent, it shall not be competent to him to contest the correctness of the measurement made in his absence;"

and by Section IV it was provided—

"If the Collector shall issue an order enjoining the attendance of the person to whom the

rent of any land is payable either by himself or by his agent under the last preceding Section of this Act, or if the Collector shall issue an order enjoining the attendance of any under-tenant or ryot under Section XXVI of the said Act X of 1859, such person or such under-tenant or ryot shall be bound to attend in obedience to such order; and if such person or such under-tenant or ryot shall fail to attend, he shall be liable to the penalty in that behalf provided by Section 174 of the Indian Penal Code, and for the enforcement of such penalty the Collector may exercise all the powers of a Magistrate."

According to the ordinary law, if a party to a suit, being the plaintiff, did not enter appearance, the suit was dismissed; or if he were the defendant, the case was decreed against him *ex-parte*. In like manner, if a landlord refused to attend the measurement of his land, the measurement should be carried out in his absence and he should be bound by it. But he failed to understand why a landlord should be liable to six months' imprisonment under Section 174 of the Penal Code, because he failed to appear when his land was measured.

What we were called upon to do now was to pass this Bill *pro formâ* and publish it as approved by the Council, when we had hardly had time to consider the Petitions presented to-day. His present impression was that the Clauses objected to were not proper Clauses; at least Section IV was not so. He should, therefore, suggest that the consideration of the Bill be postponed.

MR. HARINGTON said he had all along doubted the expediency of passing this Bill, or, indeed, of making any changes at the present time in Act X of 1859. He was not prepared to say that alterations might not be required in the Act, but he thought that further information was required, and that the only satisfactory way of dealing with the Act, and with the various suggestions which had been received in respect to it, would be to appoint a Select Committee to consider the Act and these suggestions, and to propose such modifications as might be deemed advisable. As a preliminary measure it might be desirable to send a Message to his Excellency the Governor-General in Council, asking His Excellency to call upon the Lieutenant-Governors of Bengal and the North-Western Provinces, and through them upon the local officers, for a full report of the working of the Act and of any amendments which they might be prepared to recommend. These reports, as soon as received, might be laid before the Select Committee which he had suggested should be appointed, and be considered by that Committee. This was, he thought, the only way in which the various questions connected with Act X of 1859 which had arisen, could be satisfactorily considered and disposed of. Under these circumstances he ventured to suggest that the present Bill should be withdrawn.

MR. SETON-KARR objected strongly to withdrawing the Bill. He wished to explain how the amendments complained of in the Petitions had been engrafted on Mr. Sconce's original Bill. It was found, by last year's experience, that the provision of Section XXVI of Act X of 1859 was insufficient to procure the necessary attendance of ryots whenever the zemindar wished to measure the lands. The right of the zemindar to measure lands was distinctly recognized by the Section in question and certain formalities were prescribed therein. But these formalities had not effected the desired object. If ryots, as had been the case, absented themselves in a body, or never went near the zemindar's agent, there was absolutely no one who could point out any place where the measurement should begin. If only two or three ryots attended, the zemindar might make a beginning, but the passive resistance of a whole body literally stopped all attempts at going on. To remedy this, a penalty had been introduced by him for non-attendance, and this had first taken the shape of a fine. But it was pointed out by the Honorable Member for the North-Western Provinces that a Section in the Penal Code affixed a severe penalty to non-compliance with the lawful requisition of any public servant, and this penalty was accordingly resorted to as being ready at hand, and was introduced as an amendment. As re-

gards the application of the same penalty to the zemindar who failed to attend when the ryot claimed a measurement, there seemed at present no reason why the two should not, in this respect, be placed on an equality. The amendment was not the introduction of a new principle, but a supplement to the Rent Bill which distinctly recognised the right of the landholder to make a measurement. The other amendment imposing a penalty of twenty-five per cent. was, if new to the Rent Bill, quite in accordance with established principles of law, and with the practice of certain other Courts. But he (Mr. Seton-Karr) had no objection to the postponement of the Bill in order that any objections taken by the Landholders' Association, or the British Indian Association, might be duly considered. If the sense of the Council took this course, he should offer no opposition.

MR. HARINGTON said, after what had fallen from the Honorable and learned Chairman, it was clear that the amendments which had been proposed by the Select Committee could not be passed into law without a republication of the Bill. He understood that this was also the opinion of the Honorable Member for Bengal. The amendments in question had been proposed in consequence of a representation received from the Government of Bengal; and having been informed that they were considered necessary, he (Mr. Harington) had agreed to them. The Honorable Member for Bengal had given notice of another very important amendment to render ryots cast in suits for land-rent liable under certain circumstances to penal damages. This amendment, even if adopted by the Council, could not form part of the law until it had been published for the usual time. He understood that several other important amendments were considered necessary, one of which was in the Section under which a tenant might acquire a prescriptive right to the possession of the land held by him. The Sections which formed the entire Bill as brought in by the late Honorable Member for Bengal, were of comparatively small importance, and he believed that little, if any, inconvenience would be experienced if the passing of these Sections should be delayed for a short time. He thought, therefore, that as the Bill, framed in such a manner as would satisfy all parties, could not possibly pass into law to-day, the better course would be, as previously suggested by him, to withdraw the present Bill and to bring in a new Bill containing all such alterations in the existing Act as, after full consideration, might be deemed necessary or proper, and he would make a Motion to that effect, or if the Bill could not be withdrawn at the present stage and the Honorable and learned Chairman would move that the further consideration of the Bill be postponed, he would support the Motion.

The further consideration of the Bill was then postponed, on the Motion of the Chairman.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved that the Standing Orders be suspended to enable him to carry through its remaining stages the Bill "to amend Act XXI of 1860 (for the registration of Literary, Scientific, and Charitable Societies)."

MR. ERSKINE seconded the Motion, which was put and carried.

SIR CHARLES JACKSON then moved that the Council resolve itself into a Committee on the Bill; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

SIR CHARLES JACKSON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

PUBLIC CONVEYANCES.

The Order of the Day being read for a Committee of the whole Council on the Bill "for regulating Public Conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations in the Settlement of Prince of Wales' Island, Singapore, and Malacca"—

MR. HARINGTON said, this Bill had been very materially altered by the Select Committee; in fact, the Bill, as it had left the hands of the Select Committee, was a new Bill. It was very desirable, therefore, that it should be published on an early date. As the Bill now stood, it could not pass into law without republication. It was contrary, he believed, to the practice of this Council to republish any Bill which had been amended by a Select Committee until the amendments proposed by the Select Committee had been considered and adopted by a Committee of the whole Council; but it had been suggested to him that, if the Council would agree to suspend the Standing Orders, the Bill might be published in the form in which the Select Committee had proposed that it should be passed before going through the Committee of the whole Council. It certainly appeared to him that this would be the most convenient way of dealing with the Bill, and he begged, therefore, to move that the Standing Orders be suspended to admit of his moving that the Bill be republished for two months before being further considered.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Bill be republished for two months before being further considered.

Agreed to.

SALTPETRE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate the manufacture of Saltpetre and of Salt educed therefrom;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a verbal amendment in Section XVII and after filling up the blanks in Section XVIII with the 1st December 1861 as the date of the commencement of the Act; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON said, this Bill had undergone no material alteration since it was read a second time and published for general information, and as it was very desirable that the Bill should come into operation on an early date, he would ask the Council to allow the Standing Orders to be suspended to admit of his moving to-day that the Bill be read a third time and passed.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

LIMITATION OF SUITS.

THE VICE-PRESIDENT asked to be allowed to suspend the Standing Orders in order to enable him to bring in and pass through all its stages a Bill "to postpone the operation of a portion of Clause 8, Section I, of Act XIV of 1859 (to provide for the limitation of suits.)" He said that he made this Motion in accordance with a suggestion made by the Honorable Member for Madras who had pointed out the difficulty which would arise if the Council were not prepared until the 14th December next to pass the Bill, which was read a second time to-day, to amend Act XIV of 1859. He (the Vice President) did not propose now to suspend the operation of the whole Act, but simply that part of it which related to retail bills. The Bill read a second time to-day could then be gone through in the regular course, and might be dealt with in such a manner as the Legislature of the day might see fit, *i. e.*, either read a third time or thrown out. If it

were read a third time, no harm would have been done by the passing of the Bill which he now proposed ; and if it were thrown out, the only objection that could hereafter be made was that a part of Act XIV of 1859 had been allowed to come into operation six months after the other part, and that during that period retail bills were made subject to the same law of limitation which had heretofore for a long time prevailed in the Presidency towns and which still prevailed in England.

MR. FORBES said that, as he had suggested the measure, perhaps he might be allowed to second the Motion for the suspension of the Standing Orders.

The Motion was put and carried, and the Bill was read a first and second time on the Motion of the Vice-President.

THE VICE-PRESIDENT then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

THE VICE-PRESIDENT then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

FLOGGING.

MR. HARINGTON moved that the Bill "to provide for the punishment of flogging in certain cases" be read a third time and passed.

SIR CHARLES JACKSON said that, when he left the Council last Saturday, he certainly did not intend to do more that day than record his vote against the third reading of this Bill. But since that time he had had an opportunity of consulting gentlemen whose professional acquaintance with this subject entitled them to offer a correct and valuable opinion upon it, and he must say that, anxious as we all were last Saturday, and notwithstanding all that we then did to mitigate the asperities of this Bill, we had been really working in the dark and had passed an enactment through Committee more severe than any of us had intended. He had made enquiries and had had the opportunity of looking at certain documents on the subject recorded in the Office of the Medical Board, and the result of his enquiries showed that the state of things described in the letter from the Magistrate in the North-Western Provinces which he read last Saturday, was not confined to those Provinces. He observed from the papers which he had obtained from the Medical Board, that flogging with the ratan had formerly been the cause of death in several instances in Bengal, and in one case when only twenty-five strokes were administered. He had, moreover, the authority of a medical gentleman of eminence in this town for stating, that he saw a man flogged in Bengal, who, after thirty stripes, was laid on the ground, and his back was then covered over with earth by way, he supposed, of mitigating his pain, and after an interval—being quite helpless and unable to walk—he was taken up by each shoulder, and dragged to the hospital, his legs trailing along the ground. Now, if this was the result of thirty stripes with a ratan, he (Sir Charles Jackson) was sure that we had been legislating a good deal in the dark. He was surprised that the Government had not laid before the Select Committee on this Bill the result of the enquiries instituted under the direction of Lord Dalhousie in 1851 and 1852. It appeared that the attention of the Government was at the time called to the fact of deaths resulting from flogging. Lord Dalhousie then directed an enquiry to be held, and we all knew how thoroughly he went into any question which attracted his attention. He (Sir Charles Jackson) had procured some of the papers on the subject from the Medical Board, who appeared to have ascertained the opinions of the Assistant Surgeons all over the Presidency. The enquiry involved three points, namely, 1st, as to the use of the ratan on the back. 2ndly, whether the ratan was a better weapon

than a cat-o'-nine-tails, and 3rdly, as to the benefit of medical advice being obtained before the prisoner was subjected to flogging.

He had brought with him a few of the replies. He would now read part of the report of Dr. Wilson, Civil Assistant Surgeon of Rampore Bauleah in 1850. He would read an extract to show what the effects of the ratan were when well laid on, and not to show that such flogging was now general. Dr. Wilson said :—

"The following instances of death or severe illness after flogging occurred at Bauleah in April and May of 1833. The punishment was inflicted on natives with a *bate* or ratan on the back part of the chest; the results in these cases may in some instances be attributed to neglect.

Case 1st.—Ramlochun, thirty stripes on 8th of March, cured in eight days. The sores broke out again, but he was not sent to the hospital till his back was in a mortified state. He died on the 2nd March, symptoms of inflammation of the chest having followed the mortification of his back. Mr. Civil Assistant Surgeon Burt, in a letter, attributes this circumstance to the position of the man while flogged, recommending the hands and arms to be tied in a horizontal position during such punishment.

No dissection is recorded nor any detailed account of the case.

Case 2nd.—Surroop Chowkeydar, twenty-five stripes on the 17th March. In this case every remedy was tried from the first to prevent sloughing, but two gangrenous sores three inches by six, accompanied with severe inflammatory fever, proved fatal on the 4th of April.

No dissection nor detailed account of this case.

Case 3rd.—Robie, thirty stripes on 29th March 1833. On the 12th April seized with chrysipelas spreading over the trunk. He remained in a bad state and died on 21st May. The immediate cause of death was bowel complaint and cholera, but from the first he was in a weak and hopeless state. Dissection revealed adhesions between the lungs and ribs, opposite where the stripes had been inflicted, showing that inflammation had existed there and in every probability caused by the flogging. No record of details of this case.

Case 4th.—Fukeer Mahomed, fifteen stripes, severe fever and pain in the chest ensued; by bleeding, &c., these were somewhat subdued, but cough and purulent, expectoration proved fatal on the twentieth day.

On dissection, the lungs were found a mass of disease and adhesions in the front and back part of the chest.

Cases 5th and 6th.—Ghattee and Dratree, twenty-fives stripes each, were not immediately sent to the hospital, and from exposure the wounds became unhealthy and sloughed. Both recovered.

Mr. Civil Assistant Surgeon B. Burt declared his opinion to be that thirty strokes of a ratan or less, inflicted on a native man of sound constitution, will occasionally cause inflammation of the chest and death, and immediately endanger life or cause the seeds of fatal disease to spring up which otherwise might have been dormant for years. Mr. Civil Assistant Surgeon B. Burt further expressed his opinion that in cases third and fourth the inflammation was directly excited in the chest by the floggings; and particularly regarding case fourth, in which fifteen stripes had been inflicted, that the punishment did not appear to have been inflicted with undue severity, but that the man was weak, and that a constitutional tendency to disease of the lungs existed and was developed by the flogging."

The Doctor then proceeded to give his own opinion on the subject, and expressed himself to be strongly averse to the use of the ratan. He (Sir Charles Jackson) was perfectly astonished, when he read these papers from the Medical Board, to find out what the effect of flogging with a ratan was. To show what the effect of the ratan might be, he would read the description of a *post mortem* examination held on a prisoner flogged to death with twenty-five stripes in the beginning of 1852; but it was fair to state that the person thus flogged had been recently discharged from hospital where he had been treated for an injury of the leg. The description was as follows :—

"In the vicinity of the shoulder-blades on each side of the spine, there was a patch of skin denuded of its outer covering and bordered externally by a slightly livid color. Each patch was of a quadrangular form, 7½ inches in length, and 5½ in breadth. The whole of the patch was not entirely denuded of the scarf skin, there being two or three separate streaks with intervals of entire skin. On making several incisions into the flesh, it was observed that the whole of the back extending from the neck to the hip bones, and transversely within two inches of each side of the body, and almost down to the spine and ribs, was one mass of softened and disintegrated substance, the condition of which may perhaps be better expressed in the language of the bystanders "Gosht gull gya" "Koochul hogea." The flesh was every where infiltrated with a sanious fluid. In some places it had a peculiar pale look, in others reddish, in others dark-red, and in several parts very livid almost black; that covering the shoulder blades was particularly remarked as being quite black—it very much resembled the section of a half putrid liver."

The description then went into the whole case with which he would not trouble the Council. He would only draw attention to the following account :—

"The heart was congested externally but pale within, and contained but a very little blood, showing that death arose from (asthenia) exhaustion. On dividing the substance of the heart the right cavity was found nearly filled with a whitish-grey fatty looking substance, soft in consistence. Semi-transparent and elastic processes of the mass lay entangled in the muscular bands and valve of the cavity ; the left cavity also contained a thin layer of a similar substance which fell out on removing the heart ; the great vessel of the body proceeding from the heart also contained a thin layer of the same."

The report of the *post mortem* examination concluded as follows :—

"Hence, from the remarks above noted, I think I am justified in concluding that the flogging was the direct cause of death by producing such vital prostration of the whole system as to cause the effusion of fibrin within the cavities and valves of the heart whereby the proximate cause of death was produced."

The material point which he wished to bring to the notice of the Council was this. He had ascertained that the ratan used which produced this vital decay and exhaustion—at least that the weapon generally used in Bengal—was a four feet ratan and not longer ; and therefore it was clear that when we were astonished the other day by the effects of a 5½ feet ratan and thought we were doing something material in limiting its length to 4 feet, we did not go far enough to prevent brutality.

He should now read a report of Mr. Woodcock, the Inspector of Prisons in the North-Western Provinces, dated 1850, to show how the ratan marked prisoners flogged with it. He said :—

"I am therefore of opinion, 1st, that the sufferer from a flogging on the back (an undefined space from the nape of the neck to the hips) is as obviously and indelibly branded for life as he was by the process of godna on the forehead which has been abolished by Act II of 1849."

The second was a point which had also been referred to by Dr. Wilson, and was as follows :—

"That the infliction of a flogging on the back and its frequent consequences, sloughing sores, is, from its proximity to vital parts, a dangerous punishment."

It appeared therefore that severe floggings were not confined to the North-Western Provinces alone, and that the application of a ratan to the back was most dangerous and branded the man for life. He had the authority of a medical gentleman, of extensive practice in this town for saying that the Bill as it now stood, providing for flogging on the back, was a retrograde measure and ought to be altered. This would be seen from the result of the enquiry to which he had referred. Lord Dalhousie did not act in this matter as Governor-General of India, but as Governor of Bengal ; and it appeared from the Circular issued to the Medical Officers that he laid down two rules which were as follows :—

"1*st*.—That no prisoner hereafter shall be flogged without the opinion of the Civil Surgeon being first taken as to whether the case is one in which that punishment can be safely administered.

2*nd*.—That, as a general rule, stripes should be inflicted upon the breech and not upon the back, proper measures being adopted to guard against the blows falling upon every other than the part intended to receive them."

He believed that those were very wise and humane suggestions which we could not do better than incorporate into this Act. Another result of this enquiry by the Medical Board was a strong opinion on their part that the ratan was a preferable instrument of punishment to the cat-o'-nine-tails.

He was disposed to oppose the Bill under any circumstances. But as the majority of the Council were in favor of it, and as this was the last day on which the Council, as it was now constituted, would sit, he hoped that they would agree with him in the proposals which he had to make for the improvement of the measure. He should move that the Bill be recommitted ; and that being done, that an amendment be introduced providing that the punishment should be inflicted on the buttocks instead of the back. He objected to flogging altogether, but

Sir Charles Jackson

if it was to be retained, he would have it inflicted on the buttocks as the most humane proceeding and in accordance with the medical testimony which he had adduced. Then again, although he had proposed last Saturday, when he found from the letter which he had read from the Magistrate in the North-Western Provinces that the ratan used was about five and a half feet in length, to fix the length of the ratan by this Bill at four feet—and in doing so he had thought that he was effecting a great improvement—yet he now found that the length must be still more shortened, and he should propose that it be limited to three feet six inches in length, to be administered by one man.

His next amendment would be to reduce the number of stripes from thirty to twenty-four; and lastly to adopt the suggestion of Lord Dalhousie that, before a person was flogged, medical opinion ought to be taken as to whether he was in a fit state to undergo that punishment. One of the most remarkable points connected with the punishment was that it was most unequal, and depended a great deal on the feelings of the officer by whom the sentence was carried out, the constitutional strength of the man who inflicted it, and the physical condition of the patient. He trusted that the limitation of the punishment to twenty-four stripes would prevent disastrous consequences from the inequality of the punishment as it affected particular cases. He would now move by way of amendment on the Motion of the Honorable Member for the North-Western Provinces, that the Bill be recommitted to a Committee of the whole Council.

SIR BARTLE FRERE said, it was not his intention to oppose the recommittal of this Bill, and he hoped that steps would be taken to bring the Bill to be more in accordance with his own views. But he thought it only due to those who had voted with him that he should make a few remarks on the history of this measure. His Honorable and learned friend opposite (Sir Charles Jackson) was not here when the discussion on the subject first arose, and would therefore pardon him for going through what took place in that Council a little more than a year ago.

Macaulay's Code omitted flogging from among the punishments which it recognized. It appeared afterwards, however, during the long discussion that took place regarding Macaulay's Code, that the abandonment of flogging was premature, and that the state of the country and of the people did not admit of its being entirely dispensed with. It was not, however, until after the mutiny that the punishment of flogging was introduced into the Draft Code by the Select Committee of this Council to whom the Code had been referred for consideration. When the Code came before a Committee of the whole Council on the 18th August 1860, a debate ensued on this subject, from which he would quote :—

"*Sir Mordaunt Wells* said, he did not approve of the punishment of flogging adults. It was inconsistent with the spirit of modern legislation and inapplicable to a civilized country.

The Chairman said that, in many parts of India, large bodies of natives regarded imprisonment as tantamount to the punishment of death. To such persons flogging was a most merciful punishment, and he therefore thought it would be advisable to retain it.

Sir Bartle Frere concurred with the Honorable and learned Chairman, and said that he could speak from his own experience that flogging was a very useful punishment particularly in several parts of the country where the people were in a state of semi-barbarism, and where they could not bear an amount of imprisonment which was absolutely trifling to men of more civilized habits. A very short period of confinement in the best managed and most healthy jail was sufficient to kill a man who had been used all his life to roam in the *jungle* or desert. You could not fine men who had no property, and the most merciful punishment was to give a flogging for all but the most serious offences or for such as required only a very short imprisonment.

Mr. Harington also expressed himself in favor of flogging as a suitable and proper punishment for certain offences in this country."

MR. Beadon concurred in the same view, and went on to observe :—

"He was quite sure that, if the Mofussil Officers were consulted, they would unanimously

declare in favor of the continuance of flogging as a punishment.

Sir Mordaunt Wells said, he would defer to the opinions of his Honorable friend opposite (Sir Bartle Frere) and the Honorable Member on his right (Mr. Beadon) that flogging was absolutely necessary as regards Natives. He objected, however, to flogging Europeans;"

but a motion he made on the subject was negatived upon a division.

On the 8th of September following the question again came up for discussion; on which occasion

"*The Chairman* explained that the course he proposed to pursue with respect to flogging was this. As flogging was not one of the punishments provided for by the Code as published, but had since the year 1857 been inserted in the Code as a new punishment, he did not think that the Council could pass the Code with the retention of flogging, without a republication of the Code; and this could not conveniently be done if the Code was to come into operation from the 1st of May next, as time was necessary to be allowed for the Code being properly translated and studied. He intended, therefore, to propose that the Code should stand as it was without the punishment of flogging, and to call for the opinions of the local Officers respecting the expediency or otherwise of its adoption."

That was a course in which, with the partial exception of Mr. Sconce (for he did not object entirely), the rest of the Council agreed with the Honorable and learned Chairman; and in the course of that debate, he (Sir Bartle Frere) expressed himself in the following terms, which, he thought, very nearly expressed the opinion of those who voted with him:—

"*Sir Bartle Frere* said that he would much prefer the last course suggested by the Honorable and learned Vice-President. It had been supposed that he (Sir Bartle Frere) and other gentlemen who objected to the omission of this punishment from the Code did so on the grounds that they had approved of the punishment in itself and desired to retain it permanently as a general punishment. Nothing could be farther from the truth. He was convinced he spoke the sentiments of every one in that Council when he said he was most anxious to see the punishment at once entirely and for ever abolished. His objection to its immediate abolition rested mainly on his belief that to many classes and in many parts of the country imprisonment or any other punishment which could be substituted for flogging was in reality the more inhuman of the two. There were vast numbers of wild tribes—men who never lived within four walls and who pined and died when removed from their native jungles or deserts. To these men imprisonment for even a very short period and with the lightest possible discipline and best treatment was simply a sentence of lingering but certain death."

He then mentioned some cases in which we could not dispense with it, and went on to observe as follows:—

"But while for cases such as these and a few others, he (Sir Bartle Frere) thought that flogging must necessarily be retained as a punishment for many years to come, he would be glad to see it omitted from a Code such as that on which they were engaged, which was intended to be a complete scientific and permanent work, and a standard of general penal jurisprudence for this time and this country. Believing that you could not at present dispense with flogging without incurring the necessity for resort to expedients which, though they appeared more humane, were really more cruel to vast masses of our Indian subjects, he would be glad to see the punishment omitted from the Code as a barbarous and obsolete punishment, and placed in an Act by itself as if it were only tolerated as a temporary and exceptional expedient applicable to particular classes and conditions."

Those views met with the concurrence of the Council, and a Committee was appointed, and the only further mention that had been made on this subject was when the second reading of the Bill was moved on the 22nd of December last, on which occasion

"*Sir Charles Jackson* said, he would ask the Honorable Member to postpone his Motion on two grounds. The first was a personal ground, namely, that from the pressure of his duties in Court, he had not had time to give the matter that attention which it deserved. The second was, that as the learned Chief Justice, who had devoted so much care upon the Penal Code, with which this Bill was proposed to be incorporated, was absent, he (Sir Charles Jackson) was desirous to have his assistance in the consideration of the measure,"

and so it lay over until it lately came forward again.

SIR CHARLES JACKSON explained that the Bill was discussed again in January of this year when he opposed the second reading.

SIR BARTLE FRERE thanked the Honorable and learned Judge for the correction. On referring to the debate in question, he (Sir Bartle Frere) observed that the Honorable and learned Judge was alone in opposing the second

reading of the Bill, and what he then stated did not alter the view, which had been taken by the rest of the Council when this Bill was brought in. He really thought that, considering the nature of the measure and all that had passed on the subject, the Council had now some ground to complain that what had recently been brought forward by the Honorable and learned Judge was not earlier laid before the Select Committee which could have dealt with it more appropriately than the Council at the present moment could do. He did not think it necessary to go minutely into the arguments for or against the punishment. The course which had been originally proposed for taking the opinions of the local Officers was adopted, and very voluminous reports had been received from all parts of the country. He had looked through these papers, and it was only in those received from the Noth-Western Provinces that he found any great difference of opinion as to the expediency of inflicting corporal punishment. From what was said by the Honorable and learned Judge opposite (Sir Charles Jackson) on Saturday last and to-day, he (Sir Bartle Frere) did not wonder that difference of opinion should exist in the North-Western Provinces, for it appeared that the mode of inflicting the punishment there was very different from what was usual in other parts of India, and that the Honorable and learned Judge and himself had been in fact talking of two essentially different punishments. He must say he did not lay so much stress as had been laid by the Honorable and learned Judge on those very harrowing details of the cases referred to by him as having occurred in Bengal in 1833 and subsequently up to 1850, for it appeared from what he had read that at that very time measures were taken—and he (Sir Bartle Frere) hoped effectual measures—to correct the abuses of that system. He did not think it logical to quote the abuses which had led to the appointment of a Commission, with any reference to what was the practice at present, ten years after all the recommendations of the Commission had been carried out and the abuses corrected. If the Honorable and learned Judge had any instances to adduce since the issue of Lord Dalhousie's Circular, he (Sir Bartle Frere) should be happy to hear them.

SIR CHARLES JACKSON begged to explain that the reason why he referred to those cases was not to describe what the present practice of flogging was, or the result of flogging at present, for he really had little knowledge on the point; but his object was to show what the effect of the ratan had been and could be, and thus support his amendments for the reduction of the size of the ratan, and of the number of stripes, and for the opinion of a medical officer being taken as to the capability of a person to bear flogging before he underwent that punishment.

SIR BARTLE FRERE resumed. Well, these were three points on which it was impossible not to agree with the Honorable and learned Judge. He had said that the punishment was unequal. This he (Sir Bartle Frere) most cordially admitted. But he would ask him to name any punishment which was not unequal. Imprisonment, transportation, or even death, were all most unequal punishments to persons of different constitutions, habits, and fortunes. It was impossible to devise any punishment which should be equal to all persons. As to the barbarity of flogging, he readily admitted that it was a barbarous punishment and one which he should be glad to see obliterated from our Statute book. But it was one which you could not dispense with without being guilty of substituting for it one of greater barbarity to a large class of your subjects to whom long imprisonment was nothing less than death. The question, therefore, was, what would you do to make corporal chastisement a punishment which a civilized government would be justified in inflicting? In this matter he differed very strongly from the Honorable and learned Judge and other Members. He would have left the precise mode and circumstances under which the punishment could be

inflicted to be dealt with by the local Governments so as to throw on them the duty of seeing that it should be a punishment which a civilized government would not be ashamed to inflict. But that was a course to which the majority of the Council objected, and they preferred to proceed as in England by prescribing by law the minutest particulars relating to the punishment, and leaving to the officers who had to administer the law a discretion only as to the extent of the punishment.

Then this Bill had been described—not by the Honorable and learned Judge opposite—but had been generally described and spoken of—as a Bill to legalize and introduce flogging. On the contrary, he thought that, if properly described, it was a Bill to restrict flogging to an extent to which in practice it had never hitherto been restricted since India had come under British rule. There was not a solitary crime for which this Bill provided flogging, which could not at this present moment be more severely punished with flogging under the existing law than it would be by the present Bill. These were points which he thought should not be forgotten; and in agreeing in the course which the Honorable and learned Judge proposed, he would beg to recall to his recollection the opinion which he (Sir Bartle Frere) expressed on Saturday last, when he spoke of the ratan being a more formidable weapon than a cat-o'-nine-tails. The Honorable Member for Madras had pointed out that the ratan had been used formerly in Madras, and having been found too severe and uncertain in its operation, it was abolished, and a cat-o'-nine-tails substituted for it. The Honorable Member for Madras had also stated that five stripes of a cat-o'-nine-tails were substituted by law as the equivalent for one stroke of the ratan. The cat was made in and issued from the arsenal, and was always of uniform size. It was an instrument of punishment devised by military men as an effectual and serious punishment for soldiers in full health and strength, so that it was clearly a real and severe punishment. At the same time it was required to be a punishment which should not inflict permanent injury on a soldier, or subject him to long detention in the hospital. Hence we had every reason to believe that it was not a punishment which could produce the dreadful results described by the Honorable and learned Judge as liable to follow the use of the ratan. We had not proceeded with this Bill altogether in want of knowledge. He (Sir Bartle Frere) had pointed out to the Honorable and learned Judge that the amendment which substituted the ratan for the cat, and which the learned Judge had proposed in the sincere belief that it would mitigate the punishment, only multiplied it five times, as shown by the practice obtaining in Madras, and thus changed the instrument from one which every body who knew anything about it believed to be severe but incapable of inflicting permanent bodily injury, into one which the Honorable and learned Judge had described and, he feared, with too much reason, as capable of inflicting the most frightful injuries, and even death.

With regard to the other point—the mode in which flogging should be inflicted—he had pointed out that it was provided by the Bombay law that it must be inflicted on the bare back. The change which the Honorable and learned Judge proposed would make it, if possible, a much more barbarous, degrading, and indecent punishment. Even in our public schools it was not so inflicted on a grown-up lad; and you had, moreover, this serious objection to it, that you were obliged to use this ratan and prevented from using the ordinary cat-o'-nine-tails universally in use in the British army and throughout one-half of India and which was not found open to the serious objections urged by the Honorable and learned Judge. On these two points he begged to differ from the amendments proposed by the Honorable and learned Judge. He believed that they were necessarily connected. If you legalized the ratan, you could not safely inflict the punishment on the back, and even on the buttocks it was not unattended with risk, while punishment with the cat

could only be safely inflicted on the back. But he should be glad to discuss the matter more fully, if necessary, in Committee.

MR. HARINGTON said, he was quite willing to agree to the recommitment of the Bill, and he would gladly adopt any amendments which the Honorable and learned Judge (Sir Charles Jackson) might think proper to propose, having for their object the mitigation of such parts of the Bill as might be considered too stringent or severe, and which might have the effect of diminishing the possibility of abuse. With regard to one of the amendments of which the Honorable and learned Judge had given notice, he might observe that on Saturday last the Honorable Member for Bengal had moved that corporal punishment might be inflicted either on the buttocks or on the back. The amendment was supported by himself and the Honorable Member for Madras, but was rejected on a division, the Honorable and learned Judge voting with the majority against it. He was not prepared for a re-opening to-day of the discussion on the principle of the Bill, but, however painful such a discussion might be, he should not regret the present debate if the result should be the introduction of any amendments into the Bill which might afford greater security that its provisions would not be abused. Until he heard the letter which had been read to them by the Honorable and learned Judge (Sir Charles Jackson) he could not have believed it possible that such a mode of administering corporal punishment as that letter described was possible or could be adopted by any officer. With the Honorable Member of the Government who had just spoken (Sir Bartle Frere) he should most heartily rejoice if corporal punishment could, without producing any ill effect, be abolished throughout the country; but it was the opinion of large numbers of old and experienced officers that the time had not yet come when the punishment could be dispensed with.

The Bombay Sudder Court said—

"The Judges do not doubt that any one who would at present abolish the punishment of flogging in India, would be unfit to legislate for the people in their present state of civilization, and as Mr. West has observed, to assume the existence of a state of society in which flogging would be an inappropriate punishment, however desirable such a state of society may be, will not forward its existence by one day."

They had here the deliberate opinion of one of the highest Courts in the country as to the necessity of the punishment in the present state of civilization in India, and the same opinion was, he believed, very generally entertained. In moving the first reading of the Bill, he stated that he supported the Bill not because he liked the punishment of flogging—for he disliked it—but because he considered it to be a necessary punishment, and, as regarded large masses of the people, a more merciful punishment than imprisonment, and therefore he would retain it. Individually, as he believed he had said before, he was opposed to the punishment of death, and he should be glad if it could be abolished, but he felt that, if capital punishments were abolished, human life would be less secure than it was at present, and that seemed a sufficient reason for retaining the penalty of death amongst the punishments prescribed by the Penal Code. The Honorable Member of the Government on his left (Sir Bartle Frere) had pointed out that there was scarcely any punishment which might not produce effects never contemplated or intended. If enquiries were made it would probably be found that mere imprisonment in jail had very often produced death or been the immediate cause of shortening many lives. For many years, and it might still be the case, a large number of prisoners became blind while in jail. The blindness was considered to have been brought on by confinement in jail, though what was the immediate cause of the loss of sight was not known. But no one ever thought that, by reason of the fact just mentioned, however deplorable it might be, imprisonment ought to be abolished altogether. So as regarded the administration of corporal punishment, supposing that punishment to be necessary, the abuse of the law which authorized the punishment was not a

sufficient reason for its being done away with. The records of Government would show that formerly capital punishment was carried out in a very improper manner, and instances were not wanting of great barbarity in executing the sentence; but the punishment was not abolished on that account. Proper measures were taken to put a stop to what was wrong; and rules having been laid down for the guidance of the officers on whom the painful task of carrying out the sentence devolved, they heard no complaints now. Lord Dalhousie had adopted a similar course in respect to the infliction of corporal punishment at the period referred to by the Honorable and learned Judge (Sir Charles Jackson), and it was worthy of remark that although Lord Dalhousie had before him at the time he issued his orders, the medical opinions which had been read to the Council by the Honorable and learned Judge and he must have been aware that at that time corporal punishment might be inflicted for certain offences throughout the country, he did not propose to abolish the punishment notwithstanding what had been said by the medical officers as to the consequences which occasionally attended its infliction. In the year 1834, by a Regulation passed during the Government of Lord William Bentinck, corporal punishment was abolished throughout the Bengal Presidency, but not at Madras and Bombay, and, after the lapse of ten years, they were obliged to revive the punishment in Bengal for the offence of theft. Only to-day the Council had passed a Bill under which any soldier, convicted of disgraceful conduct, might be sentenced to corporal punishment by a General, District, or Garrison Court Martial, or by a Commanding Officer of a regiment who had the same powers of punishment as a District Court Martial. Could they, he would ask, consistently allow a soldier to be flogged and to receive fifty lashes for disgraceful conduct, and at the same time declare that no civil offence, whatever might be its character, should be punishable with corporal punishment? The fact of the punishment being retained in the Articles of War showed its necessity as regarded certain military offences, and he (Mr. Harington) considered it to be equally necessary in this country for certain civil offences, though in settling the present Bill it was obviously quite proper that such provisions should be introduced as would render the mode of administering the punishment as little objectionable as possible.

Sir Charles Jackson's Motion for the recommittal of the Bill was then put and carried, and the Council accordingly resolved itself into a Committee upon it.

SIR CHARLES JACKSON then said, the first amendment he had to propose was the substitution of the words "on the buttocks" for the words "on the bare back." The Honorable Member for the North-Western Provinces had stated that he (Sir Charles Jackson) was one of those who had voted last Saturday against a similar amendment proposed by the Honorable Member for Bengal. But the Honorable Member for the North-Western Provinces had omitted to state that he (Sir Charles Jackson) was the first to point out that flogging with the ratan on the back was likely to cause serious injury, while flogging on the breech was a more degrading punishment. After hearing the arguments on both sides, he certainly had voted for the punishment on the back on the ground of the degradation of a flogging on the buttocks. But he was now prepared to admit his error. The case stood on quite a different footing from what it did last Saturday, for it seemed that this was one of the questions which was a subject of investigation under Lord Dalhousie's Government in 1852, and the result was the issue of Lord Dalhousie's order that the punishment should be inflicted on the breech instead of the back.

MR. SETON-KARR said that he was glad that the Honorable and learned Judge had become a convert to his views. He (Mr. Seton-Karr) had fortified himself with the authority of Lord Dalhousie when the question was under discussion last week, but the

learned Judge had now managed to disinter the papers on which that opinion was in part based. He trusted that the Council would perceive the advisability of ordering corporal punishment to be inflicted on the posteriors, as it was quite clear that much injury might be caused to the muscles of the back, or even to life itself, if the stripes were inflicted on the back. As to the degradation, it mattered very little at the time whether stripes were inflicted on the lower part of the person or on the back: but it mattered a great deal afterwards, because scars on the back remained long visible, sometimes even for life, and were seen whenever any man took off his clothes to bathe. As to the size of the ratan he had no objection to the reduction to three feet six inches as proposed.

SIR BARTLE FRERE said, he thought that this point was essentially connected with the other as to the instrument with which the punishment ought to be inflicted. If you allowed a ratan to be used, whether you made it five and a half feet or four feet, you would put it in the power of a strong man to inflict a thoroughly brutalizing punishment. Moreover, if you used a thick ratan, it would cause a great bruise; whereas if you used a thin ratan, it would be a sharper and consequently more severe instrument and would cut into the flesh. Before Honorable Members decided on this point he would beg them to look at the experience of the Madras and Bombay Presidencies. We had the authority of the large Presidency of Madras for the abolition of the ratan and the substitution for it of a cat-o'-nine-tails; and the same had been the case at Bombay. He might appeal to the Honorable Members for Madras and Bombay whether they had ever heard of such a thing as a prisoner dying or being seriously or permanently injured from the effects of a flogging with the cat? You had, moreover, the experience of the Army where this punishment had been inflicted for a great length of time past without the possibility of fifty or even a hundred stripes seriously endangering life. The atrocity which used to be committed by a boatswain's cat was owing to the use of quite a different instrument.

SIR CHARLES JACKSON said, the cat used on board a man-of-war was an awful instrument. He could speak from his own knowledge that it was so in 1842, for he had then been shown one.

SIR BARTLE FRERE said, he was not speaking of the cat used on board ship, but of the military cat. He did not think that the amendment proposed by the Honorable and learned Judge would mend matters, while the indecency and barbarity of the punishment, as proposed by him to be inflicted, would be much greater; and he would put it to the Honorable and learned Judge whether it would not be better to adopt the cat instead of the ratan.

SIR CHARLES JACKSON said, he could only assure his Honorable friend that he was most anxious, as he believed all Honorable Members were, to come to a proper conclusion on the subject. When he addressed the Council last Saturday, the opinion was pretty general that the ratan was preferable to a cat. He believed with the Honorable Member of Government that, if a cat were used in the ordinary way, it would be a very light punishment. But if it were used sometimes separating the tails between each stroke, instead of having thirty stripes, you would have thirty multiplied by nine, or two hundred and seventy stripes. If he could only be convinced that the cat-o'-nine-tails inflicted less bodily injury than the ratan, he could have no objection whatever to the adoption of the former; but the opinion of the Medical Board in 1852 was the other way. As for the indecency of the punishment if inflicted on the buttocks, that was an objection to the punishment generally, in which he fully concurred; but he saw no help for it if flogging was resorted to after the medical testimony which he had adduced and which went to show that flogging with the ratan on the back was likely to cause death.

SIR BARTLE FRERE said, if the cat-o'-nine-tails were adopted, it need

not be inflicted on the buttocks; and as to which of the two was less severe, he thought we should on that point ask the opinion of gentlemen who had been in charge of jails. He would appeal to the Honorable Member for Bombay whose duty it had been for some time to visit the jails weekly. Apart from that, however, we had before us testimony which, he thought, ought to weigh with the Honorable and learned Judge. Take, for instance, the reports from the North-Western Provinces in which a considerable diversity of opinion appeared to exist. In the letter from the Secretary to the Government of those Provinces it was said :—

"The Lieutenant-Governor does not concur with those who denounce the Bill in terms of unqualified condemnation. He thinks with Mr. Ross and Mr. Gubbins, Judges of the Sudder Court, and with the majority of the Judges and Magistrates who have given expression to their views, that there are classes of offences which corporal punishment will be more efficacious to prevent, than the penalties of imprisonment and fine; and His Honor conceives that the character of the criminal population in this country, generally, is so low, that the infliction of stripes will, in very rare cases indeed, be felt as degrading to the individual, however painful physically."

Among those who objected to the punishment was Mr. Hume. the able Magistrate of Etawah, who, though opposed to the principle of corporal punishment, had expressed himself as follows :—

"In conclusion, should flogging temporarily be revived, he recommends that the use of ratans be prohibited, and the use, instead, of a cat-o'-nine-tails of an uniform size, weight, and shape, be rendered compulsory."

He had stated the reasons which led him to object to the use of the ratan on the buttocks. He did not wish to divide the Council on the question.

MR. FORBES said that, as he had been appealed to by the Honorable Member of Government, regarding the effects of corporal punishment in Madras, he would say that he certainly never had heard of any case in the remotest degree similar to that which had been described by the correspondent of the Honorable and learned Judge whose letter he read to the Council on Saturday last; but he (Mr. Forbes) was quite sure that he should be doing foul wrong to the Magistrates in the North-Western Provinces, if he supposed for one moment that corporal punishment was ordinarily inflicted in the manner which had been described. In Madras the instrument of corporal punishment had been the ratan up to the year 1831 or 1832, and up to those years thirty-nine stripes of the ratan might be awarded. In one of those years, the instrument was changed to the cat-o'-nine-tails, and five stripes of the latter were substituted for one stroke of the ratan, so that a hundred and ninety-five stripes with a cat-o'-nine-tails became the limit of punishment instead of thirty-nine strokes with a ratan.

It had been his (Mr. Forbes') misfortune in the course of his service to see punishment inflicted to the full extent of the law, and he would say that he never saw a prisoner who had received the punishment who was not perfectly able to walk away, and it was because it was the opinion of the executive officers in Southern India that corporal punishment as now inflicted with a cat-o'-nine-tails was a comparatively light and inefficient punishment, that he had on Saturday last voted for the general introduction of the ratan.

He (Mr. Forbes) must remind the Honorable and learned Judge that, if the cat-o'-nine tails were substituted for the ratan in this Bill, he must be prepared to increase the number of stripes, as twenty-five lashes with a cat-o'-nine tails would be really no sufficient punishment for crime, and hardly more than might be inflicted on a school-boy.

MR. SETON-KARR said that, when this question was before the Council last Saturday, he observed that he proposed the ratan for Bengal as indigenous, and familiar to Magistrates and to the native officials. He had no objection to the adoption of any amendment allowing the use of a cat-o'-nine-tails in Bombay and Madras. But he would plead for the retention of the ratan in Bengal.

MR. ERSKINE said, the Honorable Member of Government having appealed to him as to the practice in respect to flogging in the Bombay Presidency, he (Mr. Erskine) must say that he could fully confirm the statement of his Honorable friend on this subject. Like other Members of the Council he had been taken quite by surprise when certain descriptions had been read to them by the Honorable and learned Judge on his right (Sir Charles Jackson) relative to the mode in which the punishment of flogging had sometimes apparently been inflicted in the North-Western Provinces and in Bengal. He had never heard of anything of the kind in Bombay; and he was glad to be able to affirm with great truth that he did not believe anything of the kind had occurred there. At the same time this discussion certainly served to show more clearly than ever the wisdom of an amendment proposed by his Honorable friend (Sir Bartle Frere) on Saturday last, to the effect that discretion should be left to the local Governments, and the responsibility imposed upon them, of prescribing exactly the nature of the instrument to be used and the mode in which the punishment of flogging should be inflicted in each Presidency. He believed that the rules now in force on these points in Madras and Bombay had been drawn up in a humane spirit, and that they were applied with as much humanity as was compatible with the object of the punishment. He should therefore be glad to support his Honorable friend's amendment if it were again brought forward to-day, as he thought the rules now contemplated would enhance the severity of the infliction in Western India.

THE CHAIRMAN said, he was sure we were all anxious to make this punishment as little barbarous as possible. The question now before us was not whether flogging was or was not absolutely necessary, but how it ought to be inflicted. He thought that we were all deeply indebted to the Honorable and learned Judge for the investigation which he had made, the result of which was to show that flogging with the ratan on the back could not be inflicted without endangering life. He never conceived that the punishment could be administered in the mode in which it had been described by the Honorable and learned Judge. He (the Chairman) was not present at the discussion which took place last Saturday. But he had read the debates, and the Honorable and learned Judge had been kind enough to favor him with a sight of the letter which he had read. Nothing could exceed the painful account therein described of the scientific way in which the punishment appeared to have been inflicted. The question at present was simply whether the punishment should be inflicted on the bare back or the buttocks. The Honorable and learned Judge had suggested that it should be on the buttocks, and he (the Chairman) thought from the medical evidence which he had read, that flogging on the buttocks was attended with less danger than on the bare back. He would only suggest that, if it was to be on the buttocks, it should not be on the bare buttocks but through some light garment over the buttocks. He believed it was so suggested when an Act was proposed for punishing boys in 1853. On referring to Act I of that year, which was an Act for providing in the Presidencies of Fort St. George and Bombay for the punishment of males of tender age for petty thefts, he found it enacted that every Magistrate, &c.,

> "shall on conviction of theft of property not exceeding in value fifty rupees, if the person convicted be a male and shall appear to him, by inspection or other evidence, to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice, sentence such person to corporal punishment with a light ratan, not exceeding ten stripes, to be inflicted on the bare palm of the hand, or through a light garment on the back."

He should vote for the substitution of the word "buttocks" for the words "bare back," and then he should move to add the words "through a light garment." He thought it very indecent to see grown-up men flogged on the

bare buttocks. Whether these amendments were carried or not, he would not vote in support of this Bill for reasons which he should give presently.

SIR CHARLES JACKSON thanked the Honorable and learned Chairman for his suggestion. He quite agreed to it and had no objection to incorporate it with his amendment.

The question was then proposed that the words "through a light garment on the buttocks" be substituted for the words "on the bare back."

SIR BARTLE FRERE said, he did not intend to divide the Council on the question. He would only remind the Honorable and learned Judge opposite (Sir Charles Jackson) that he was going to make the punishment for many parts of India far more degrading, more barbarous, and more severe than it now was.

MR. HARINGTON said, he hoped Honorable Members would not form an opinion unfavorable to the Magistrates of the North-Western Provinces generally from the letter which had been read to them by the Honorable and learned Judge opposite (Sir Charles Jackson) or, indeed, base any judgment upon that letter. He, of course, could not take upon himself to assert that the mode of administering corporal punishment described in that letter was practised nowhere or had never been adopted in the North-Western Provinces. He had remarked on a former occasion that he could not suppose that the writer of the letter was drawing a picture of the infliction of corporal punishment from his own imagination, but that he must be understood as relating only what he knew to have occurred. He felt, however, he might say that the practice was by no means general. Doubtless, as he had said before, the Honorable the Lieutenant-Governor of the North-Western Provinces, on reading the reports of last week's and to-day's debates, would consider it his duty to institute a full enquiry on the subject, and he (Mr. Harington) hoped to have the honor of laying the result of such enquiry before the Council. Meanwhile he would ask Honorable Members to suspend their judgments and not to form an unfavorable opinion of the Magistrates of the North-Western Provinces in consequence of what had been stated by the writer of the letter which had been read to them.

SIR CHARLES JACKSON said, with reference to the statement of the Honorable Member of Government, that it certainly placed him in a most embarrassed position to be told that he was making the punishment for parts of India more degrading, barbarous, and severe than it now was. Surely every one knew that our great object was to adopt the least objectionable punishment, and he thought it hard to be told that we were aggravating the punishment as it now was. If the Honorable Member of Government thought it would be any relief to him, he would presently have an opportunity of voting in support of a Motion for the reduction of the number of stripes.

The question was put and agreed to.

Section V, as amended last Saturday, provided as follows :—

"In cases in which the punishment of flogging is awarded in addition to the punishment of imprisonment, *the flogging shall not be inflicted if an appeal is preferred within fifteen days from the date of the sentence until two months from such date, if the sentence is open to revision by a superior Court, unless the sentence shall have been sooner confirmed, or an appeal from it shall have been sooner rejected.* If an appeal is preferred within fifteen days from the date of the sentence and no order is received within two months from such date, the officer entrusted with the execution of the sentence shall refer for orders to the Appellate Court."

MR. HARINGTON moved the substitution of the following words for the words in italics :—

"by a Court whose sentence is open to revision by a Superior Court, the flogging shall not be inflicted until two months from the date of such sentence, if an appeal is preferred within fifteen days from the date of such sentence, unless the sentence shall have been sooner confirmed or an appeal from it shall have been sooner rejected."

The Motion was carried, and the Section as amended then passed.

SIR CHARLES JACKSON went back to Section VI, and moved the

The Chairman

substitution of the words "three feet six inches" for the words "four feet."

SIR BARTLE FRERE said that here again he must say it was not his intention to divide upon this question also. He would only again point out that, whether the length was four feet, three feet, two feet, or even if you came down to eighteen inches, if you armed a strong man with an instrument one blow with which the Honorable and learned Judge had shown might inflict death, by diminishing its length you would not decrease its power to inflict injury far greater than you intended. However you might limit its circumference, it was a far more formidable weapon than a cat-o'-nine-tails.

SIR ROBERT NAPIER said, he did not quite agree with the remark of his Honorable colleague that the punishment would be more severe with a thin than a thick ratan. If the instrument of punishment were thick—such, for instance, as an inch, or three-quarters of an inch, in diameter—it would bruise the flesh and cause serious injury, and for this reason he (Sir Robert Napier) had recommended the circumference to be limited to three-quarters of an inch, and consequently the diameter to a quarter of an inch. If the thinner instrument punished more than the thicker one, then the thin cords of the cat would be worse than the ratan, but in his opinion such was not the case: he had never heard of a man dying from being flogged with the cat. The size of the cat was prescribed by law in minute details.

Regarding the part where the punishment was to be administered, it was well known in the Upper Provinces that natives felt the shame and degradation of being flogged on the buttocks so deeply, that nothing would induce them to complain of such punishment, where they would have to show the marks in a Court of justice. The amendment of the Honorable and learned Vice-President had rendered the punishment less objectionable than before, and therefore he (Sir Robert Napier) had not opposed it.

SIR CHARLES JACKSON said, the question now was whether the length of the ratan should be reduced from four feet to three feet six inches. We all knew from our school experience the sensible difference between a long and short ratan.

SIR BARTLE FRERE said, the Honorable and learned Judge would see the difference between the two instruments, if he struck a horse with a whip and if he struck the same animal with a cane He would repeat that he should prefer the cat on the back, as the more equal, less dangerous, and less barbarous punishment of the two.

MR. HARINGTON said, he understood that the opinions of the Medical officers which had been read to them by the Honorable and learned Judge (Sir Charles Jackson) were in favor of the use of the ratan rather than of the cat.

SIR CHARLES JACKSON assented, and the Motion was put and carried.

SIR CHARLES JACKSON then moved that the number of stripes be reduced from thirty to twenty-four.

MR. HARINGTON said that, so far from thirty stripes of a ratan being considered too many, the general opinion seemed to be that the maximum number should be larger. He saw no reason for making any change in the Bill in this respect, and should vote against the Motion to reduce the number.

MR. SETON-KARR said that twenty-four was an insufficient number in the case of thieves; that the number of thirty was a maximum; and that no cause had been made out for the reduction. He should feel it his duty to oppose the amendment.

The question being put, the Council divided:—

Ayes 5.	*Noes* 3.
Sir C. Jackson.	Mr. Seton-Karr.
Mr Erskine.	Mr. Forbes.
Sir Robert Napier.	Mr Harington.
Sir Bartle Frere.	
The Chairman.	

So the Motion was carried, and the Section as amended was then passed.

SIR CHARLES JACKSON moved the addition of the following words to Section II:—

"No sentence of flogging shall be carried into execution unless a Medical Officer of Government shall certify that the offender is in a fit state of health to undergo such punishment."

MR. FORBES moved by way of amendment the insertion of the words "if available" after the word "Government."

MR. FORBES' amendment being put after some slight discussion, the Council divided:—

Ayes 6.	*Noes* 2.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Erskine.	The Chairman.
Mr. Forbes.	
Mr. Harington.	
Sir Robert Napier.	
Sir Bartle Frere.	

So the Motion was carried.

SIR CHARLES JACKSON'S Motion, as amended, was then put and carried, and the Section as amended passed.

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be read a third time and passed.

SIR CHARLES JACKSON said that, after the long discussion which had taken place on the subject of this Bill, he would not detain the Council with any lengthened remarks in opposing the third reading of it. He would merely observe that he considered the Bill a most unhappy *pendant* to the Penal Code. That Code, which would be handed down to posterity, and be the real glory of this Council, would now unfortunately have tacked to it one of the most unhappy Acts ever passed by the Council.

THE VICE-PRESIDENT said, he had a very few words to say in support of the vote he was about to give. He had certainly very much changed his opinion upon the subject of this punishment since the year 1858. Up to that year flogging was not allowed in Bengal except in certain specified cases. Under the Act of 1844 flogging was a punishment which might be inflicted for petty thefts and was rather intended to provide for the case of persons of tender years than of mature age. By Act III of 1844, therefore, corporal punishment might be said to have been abolished altogether in Bengal. It continued in force in Madras; and under the Code which was passed in Bombay in 1827, flogging was authorized as a punishment in certain cases. In 1858, just after the mutinies, it appeared that a number of jails were overcrowded, and it became necessary to substitute flogging for imprisonment in certain cases. But this Bill went farther. It provided for flogging in addition to imprisonment in many cases. In 1853 an Act was passed for the Presidencies of Madras and Bombay similar to that passed for Bengal in 1844, whereby boys of tender years were allowed to be flogged rather in the nature of school discipline than of ordinary criminal justice. After the mutiny had broken out and prisoners had been released from the jails in which they were confined, it was considered necessary to substitute corporal punishment for imprisonment in certain cases rather than overcrowd the jails. Here the matter rested until the question was revived, as had been correctly stated by the Honorable Member of Government, in the course of the discussions which took place on the Penal Code, and the Clause in that Code which related to flogging was struck out in Committee (among other reasons) for those stated in the following remarks of the Honorable Member of Government:—

"Believing that you could not at present dispense with flogging without incurring the necessity for resort to expedients which, though they appeared more humane, were really more cruel to vast masses of our Indian subjects, he would be glad to see the punishment omitted from the Code as a barbarous and obsolete punishment, and placed in an Act by itself as if it were only tolerated as a temporary and exceptional expedient applicable to particular classes and conditions. The course, therefore, which seemed to him best was that suggested by the Honorable and learned Vice-President, to refer the subject for the consideration and report of the local authorities,

and to permit by separate enactment flogging in those cases only where the reports might show it was necessary to retain it for such reasons as he had described."

Now this Bill gave the power of flogging generally. There might be certain wild tribes on whom it might be necessary to inflict flogging. But we had not been told so by the local Governments. The only answers we had received were from Bombay, Oude, and the North-Western Provinces. We had no answer from Bengal or from Madras. In the North-Western Provinces many of the Officers seemed to be in favor and many of them against the Bill. Those who were against it thought that flogging would not deter persons from crime; and then we had an opinion of the Judicial Commissioner of Oude who said—

"But still I think that, as was said by one of the Deputy Commissioners (Captain Thompson), in a large proportion of thefts and such crimes, flogging alone cannot be effectual unless it is carried to the point of brutality."

The Honorable and learned Judge (Sir Charles Jackson) had called the attention of the Council to a letter which he had received from a Magistrate in the North-Western Provinces, and also to some orders of the Government of Bengal passed in 1852. Although he (the Vice-President) was a Member of the Government of India in 1852, he certainly was not aware of the correspondence which took place by the Bengal Government. He never conceived that the punishment of flogging was carried out to the extent described in the documents referred to. He certainly thought that the way in which the punishment of flogging was inflicted was as described in the Acts of 1844 and 1853 alluded to by him, *i. e.*, rather in the nature of school discipline than of ordinary criminal justice. Now it appeared from what had been stated by the Honorable and learned Judge that a question had been raised whether the punishment could be inflicted in that manner without having an utterly brutalizing effect not only on the person on whom it was inflicted but on the by-standers. Mr. Campbell, from whose opinion he had just quoted, went on to say:—

"It can only be effectually administered with certainty and safety under the immediate and close personal superintendence of the European officers, and I think that we must not too much turn our Judges into executioners. I look on this, in fact, as one of the principal difficulties of the system. The constant participation in such scenes must have more or less a brutalising effect on almost any man's mind, and must tend to perpetuate that harsh and severe feeling which, not unnaturally resulting from the scenes of 1857, it must now be our object to soften down and eradicate."

He thought that we were all of one opinion that this was not a punishment to be inflicted unless in cases of absolute necessity; and when the necessity for it was established, the next question to consider was how it could be best inflicted. If the punishment could not be avoided, then it ought to be mitigated as much as possible. Through the exertions of the Honorable and learned Judge, and, he might say, of all the Honorable Members, Clauses had been introduced into the Bill on Saturday last, to which, perhaps, the term barbarous could not properly be applied. We had also provided to-day that no sentence of flogging should be carried into execution unless a medical officer of Government, if available, certified that the offender was in a fit state of health to undergo the punishment, besides requiring the punishment to be inflicted in the presence of a medical officer if available. But if it was necessary to have all these safe-guards provided by the Bill, was it a punishment that ought to be inflicted at all, unless in case of absolute necessity? Now, had the case of absolute necessity been made out? The Government of Bombay had not put it as a case of absolute necessity. None of the Governments who had reported on the Bill, had put it as a case of absolute necessity; but they said that in the opinion of some officers it would be a very useful punishment, while others considered it necessary to deter persons from crime. One of the grounds put

forward by the Bombay Government was the cheapness of the punishment. But he did not think that that was a ground on which any Honorable Member would vote in favor of the punishment. It might be that it was required for wild tribes, but it was not stated in the papers that the Act was required on such a ground as that. Now, our powers as Members of this Council would quickly pass out of our hands, and he thought we ought not to let this Bill be passed unless we were satisfied that it was absolutely necessary. We should not have the power of retracing our steps if we discovered that we had committed a mistake in passing this Act, although there might be other Members who might do so. He was quite sure that the Honorable Mover of this Bill would not press it if he thought we could safely dispense with it. He agreed with the Honorable Member that what the people required was rest from legislation, and he would ask the Honorable Member to drop this Bill, and to see for a period of two or three years whether we could not go on under the Penal Code without adding flogging to the punishments prescribed by that Code. He was sure that the Honorable Member would not press the Bill unless he felt that his sense of duty required him to do so.

MR. HARINGTON said, referring to what had just fallen from the Honorable and learned Vice-President and to the appeal which the Honorable and learned Vice-President had made to him, he must remind the Council that he was not the sole framer of this Bill, nor the Mover of it in the sense in which Honorable Members who brought in Bills were the movers of the Bills framed or brought in by them. The present Bill had been prepared by a Select Committee which had been appointed by the Council to consider the subject of corporal punishment and to prepare such Bill as they might consider necessary. It was true that he moved the first reading of the Bill and that he was considered to be in charge of the Bill, but that had happened simply from the circumstance of his being the senior Member of the Select Committee to which the preparation of the Bill was entrusted. In making this statement he begged it to be understood that he shrunk from no responsibility which fairly and properly attached to him in connection with this Bill and with its preparation and introduction. He was quite prepared to bear his full share of responsibility in the matter; but he must repeat that the Bill was not his Bill; it was the Bill of the Select Committee appointed by the Council. He could assure the Honorable and learned Vice-President that, if he could conscientiously do so, it would give him very great pleasure to vote against the third reading of the Bill; but he was satisfied that in the present state of civilization in the greater part of India the Bill was a necessity, and that in many parts of the country corporal punishment was a more humane punishment than imprisonment. It was not because he liked the punishment of flogging that he supported the present Bill. As he had already said, he disliked the punishment, and he should be very glad if it could be safely abolished throughout the country; but he felt that the time had not arrived when this could properly be done, and therefore it was that he gave his support to this Bill. The Honorable and learned Vice-President had remarked on the fact that no opinion had been expressed by the Punjab authorities in favor of the Bill. But he was able to state that the authorities in the Punjab approved of the Bill, and he believed that they would regret exceedingly if the punishment of flogging were abolished in the Punjab from the time the Indian Penal Code was ordered to come into operation. The Oude authorities were in favor of the Bill, and, equally with the authories in the Punjab, would, he believed, regret if corporal punishment were ordered to be discontinued in that Province. The Honorable the Lieutenant-Governor and the majority of the Judges and Magistrates in the North-Western Provinces were in favor of the Bill. The Bombay authorities were also in favor of the Bill, and although no opinion had been expressed by the Madras authorities,

The Vice-President

they had the assurance of the Honorable Member for Madras that there was no wish for the abolition of corporal punishment in that Presidency, but the contrary. In the face of these opinions, however painful to him it might be to think that the last vote which he might ever give was given in favor of a Bill of this nature, he felt that if he withheld his vote for the third reading of this Bill he should be shrinking from his duty.

THE VICE-PRESIDENT disclaimed all intention of throwing the responsibility of the Bill on the Honorable Member for the North-Western Provinces. He was aware that the Bill had been prepared and brought in by a Select Committee specially appointed for the purpose by the Council.

SIR BARTLE FRERE said, in regard to the parentage of this Bill, he would beg to point out that the Honorable Member for the North-Western Provinces had not introduced it of his own choice or on his own responsibility. He had only acted in accordance with the general sense of the Council in taking charge of the Bill. The portion of the debates which he had quoted to-day showed that this Bill was originally an integral part of the Penal Code. When the Code came under the consideration of a Committee of the whole Council, it was pointed out by the Honorable and learned Chairman that only two courses were open to the Council. One of them was to omit flogging altogether from the Code and provide for it by a separate enactment after consulting the local officers on the subject; and the other was to introduce it in each case in which it was required.

The former course was adopted; and the Select Committee to whom was entrusted the duty of framing the Bill only did what would otherwise have been the duty of the Council at large. In regard to the opinions which had been expressed regarding the Bill, he drew a totally different deduction from what had been stated by the Honorable and learned Vice-President. Mr. George Campbell, the Judicial Commissioner of Oude, who was justly deemed a great authority, and whose opinion had been quoted by the Honorable and learned Vice-President, had observed in another place as follows:—

"We certainly, in former days, went a great deal too far on the side of excessive horror of degrading sentences, and threw away one of the cheapest, and, in many cases, most efficacious modes of punishment without supplying any adequate substitute. That the large use of flogging is an immense improvement on our previous practice, and very beneficial to the interests of justice and the morals of the community, I have no doubt. But that the great criminal question is thus solved, that we have found the *panacea* for all our difficulties, is one of those rough and extreme ideas, engendered by the mutiny, of which we must now rid ourselves."

Now he thought that that was an extremely just and sensible view of the case, and that he was justified in quoting Mr. Campbell as in favor of the Bill, and not, as the Honorable and learned Vice-President supposed, against it. So with regard to the opinion expressed by the Bombay Government; and he would ask to be allowed to observe here in passing that this was the opinion of one who had spent thirty-five years of his life in this country, and who was better entitled to offer an opinion on the subject than any man in India—a man who was known throughout India for his extreme humanity as well as for his ability as an administrator. He meant Sir George Clerk. The opinion of that statesman was as follows:—

"It should be a principal condition of all punitive measures, that the punishment be really a punishment. The penalty most frequently inflicted is 'imprisonment with hard labor.' The Honorable the Governor in Council considers it would be against all evidence to assert that such imprisonment is in India no punishment at all, but he cannot doubt that its efficacy is impaired in a greater degree than in Europe, by the fact that the mass of prisoners are better clothed, fed, and housed in jail than when they were free-men; that their primary wants are more amply satisfied; and that it is only with respect to their secondary wants, enforced abstinence from tobacco and other indulgences, that they feel the life of a jail at all irksome. The only classes to which imprisonment is a really severe punishment are certain rude tribes which inhabit mountains and jungles. On prisoners of these classes, confinement produces a mark-

ed effect, they droop and languish, and are subject to atrophy. With respect to these classes their imprisonment carries with it a greater degree of severity than the legislature contemplated; with respect to others its efficacy as a punishment is not sufficiently certain. The exception, then, as well as the rule, suggests the employment of another punishment either as an adjunct or a substitute.

The condition of certainty is perfectly fulfilled by flogging; it is plainly a punishment to which no human being can be insensible.

In proportion as a punishment is a reality, it is deterrent; it is deterrent not only to the recipient but to others. It must be very doubtful whether the description of prison life given by a released convict to his companion in his own village, can really present any formidable aspects, but the statement that he was flogged, is one which every imagination can realize, and the warning is only the more impressive when the sufferer shows the scars of recent punishment. And it must be borne in mind that the mass of criminals with whom our Courts have to deal are men altogether deficient in a moral sense, and on whom no punishment which does not inflict actual pain, can exercise any perceptible influence."

He thought, therefore, that as far as opinions went, they did not bear out the opinion of the Honorable and learned Judges but were pretty conclusive as to the necessity of maintaining corporal punishment as a punishment to be provided by law. He did not look upon this Bill with much more favor than the Honorable and learned Judge opposite (Sir Charles Jackson). He did not think that the Honorable and learned Judge's amendments had, after all, improved the Bill in any respect. It seemed to him that the amendments provided the very worst mode of inflicting this punishment. But however that might be, we had now limited the punishment to a considerable extent, and he hoped to see the day arrive before he left India, which could not be very long hence, when this punishment might be expunged altogether from our Statute book. At the present time, however, he hoped that nothing would deter us from continuing a punishment which our best informed local officers considered necessary. As for any of our officers liking the punishment, such a notion was peculiarly abhorrent to the feelings of an Englishman. In the few cases in which the Honorable and learned Judges had spoken of officers liking the punishment, he (Sir Bartle Frere) believed that the only feeling was anxiety to see justice done to a rascal. He believed that no one British officer out of a hundred went to see an execution of such a sentence without deep regret, and he was certain that the day when we could safely expunge it from our Statute book altogether, would be hailed as a bright day by every judicial officer in India.

The question being put, the Council divided :—

Ayes 6.	*Noes* 2.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Erskine.	The Vice-President.
Mr. Forbes.	
Mr. Harington.	
Sir Robert Napier.	
Sir Bartle Frere.	

So the Motion was carried, and the Bill read a third time.

LIMITATION OF SUITS.

THE VICE-PRESIDENT moved that the Bill "to amend Act XIV of 1859 (to provide for the limitation of Suits)" be referred to a Select Committee consisting of Mr. Harington, Mr. Seton-Karr, and the Mover.

Agreed to.

MESSENGER.

SIR BARTLE FRERE was requested to take the several Bills read a third time to-day to the Governor-General for his assent.

STAMP DUTIES.

MR. HARINGTON moved that the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR presented a preliminary Report from the Select

Committee on the Bill "for the better enforcement of discipline in the House of Correction at Calcutta," and moved that it be adopted.

Agreed to.

ZEMINDARY DAWKS.

MR. SETON-KARR moved that the Bill "to improve the system of Zemindary Dawks in the Provinces subject to the Government of Bengal" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

BREACH OF CONTRACTS.

THE VICE-PRESIDENT said, he begged to explain that, as it was the intention of the Council to adjourn till the 16th of November, the Select Committee on the Bill "to provide for the punishment of Breach of Contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce," and the Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of Agricultural produce" would meet notwithstanding during the adjournment, for the purpose of preparing their preliminary Report, which would be kept ready for presentation to the Council at its next Meeting.

The Council adjourned at 5 o'clock, till Saturday, the 16th November, on the Motion of Sir Bartle Frere.

Saturday, November 16, 1861.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, Presiding,

Hon'ble C. Beadon,
Hon'ble Major-General Sir R. Napier,
H. B. Harington, Esq.,
H. Forbes, Esq.,
C. J. Erskine, Esq.,
and
Hon'ble Sir C. R. M. Jackson.

MALACCA LANDS; PORT BLAIR; MERCHANT SEAMEN; ARTICLES OF WAR (NATIVE ARMY); BENGAL MILITARY ORPHAN SOCIETY; SALTPETRE; AND LIMITATION OF SUITS.

THE PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to regulate the occupation of land in the Settlement of Malacca;" the Bill "to regulate the administration of Port Blair and other Settlements in the Andaman Islands;" the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen);" the Bill "to consolidate and amend the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army;" the Bill "to enable the Bengal Military Orphan Society to register under Act XXI of 1860 (for the Registration of Literary, Scientific, and Charitable Societies);" the Bill "to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof;" and the Bill "to postpone the operation of a portion of Clause 8, Section I, Act XIV of 1859 (to provide for the Limitation of Suits)."

PROCLAMATION.

The following Message from the Governor-General was then read:—

"MESSAGE No. 289.

The Governor-General has the honor to forward to the Legislative Council the accompanying copy of a Proclamation by the Governor-General in Council, publishing the Act 24 and 25 Vic. c. 67 (called The Indian Councils Act, 1861), with an Extract of a Despatch in the Legislative Department from the Secretary of State, No. 14, dated the 9th of August 1861.

By order of the Right Honorable the Governor-General.

W. GREY,
Secy. to the Govt. of India."

FORT WILLIAM,
The 16th November 1861.

SIR BARTLE FRERE moved that the Clerk of the Council be requested to read the Proclamation and the Ex-

tract from the Despatch of the Secretary of State referred to in the Message,

The Motion was carried, and the above papers were accordingly read as follows :—

"No. 2070.

FORT WILLIAM,

HOME DEPARTMENT,

The 16th November 1861.

PROCLAMATION.

Whereas it is declared by the 54th Section of the Act 24 and 25 Vic. c. 67, entitled "An Act to make better provision for the constitution of the Council of the Governor-General of India and for the local Government of the several Presidencies and Provinces of India, and for the temporary Government of India in the event of a vacancy in the Office of Governor-General," that the said Act shall commence and come into operation as soon as the same shall have been published by the Governor-General in Council by Proclamation, His Excellency the Governor-General in Council does hereby publish and proclaim the said Act for general information."

Extract paras. 1 and 2, of a Despatch from the Secretary of State in the Legislative Department, No. 14, dated 9th August 1861.

1. "I herewith transmit a copy of the Act recently passed by Parliament, to make better provision for the constitution of the Council of the Governor-General of India, and other purposes; and in so doing, I take the opportunity of acknowledging the receipt of the letters noted in the margin, and at the same time, of expressing my obligations for the valuable assistance I have derived from the several communications which I have received from your Lordship in Council, bearing on the important subjects for which provision is made by the Act.

Governor-General's letter No. 2A. dated 15th January 1861.

Governor General's letter No 3A., dated 26th January 1861.

Letter from Government of India, Public Department, No. 10, dated 31st January 1861.

2. "In forwarding to your Lordship in Council the Act which brings to a close the labors of the present Legislative Council of India, it is due to that body that I should place upon record the high sense I entertain of the important services it has rendered in the marked improvement which it has effected in the legislation of India. Since the year 1853, when the Council received its present constitution, it has had to deal with some of the most important questions which could have been submitted to the consideration of any legislative body. The projects of law laid before it have been carefully considered and ably discussed, and the result of its labors has been to place on the Statute Book of India a series of sound and judicious measures which eminently establish its claim to the gratitude of the country and the thanks of Her Majesty's Government."

SIR BARTLE FRERE then moved that the above Message and its enclosures be entered in the Minutes of the Council.

Agreed to.

TOBACCO AND PAWN (BENGAL.)

THE CLERK presented a petition from Rajkissen Mookerjee, Zemindar of Ooterparah, against the Bill "to provide for the imposition of a tax on Tobacco and Pawn in the Districts subordinate to the Government of Bengal," and reported that the petition concluded with no distinct prayer.

LIMITATION OF SUITS.

THE CLERK reported that he had received a communication from the Home Department, forwarding a copy of a Despatch from the Secretary of State, relative to Act XI of 1861 (to amend Act XIV of 1859, to provide for the Limitation of Suits).

MR. HARINGTON moved that the communication be printed.

Agreed to.

BANKS.

THE CLERK reported that he had received a communication from the Financial Department, forwarding a copy of a Draft Bill to amend Act VI of 1839 and Act XXI of 1854 (the law relating to the several Banks of Bengal, Madras, and Bombay).

MR. BEADON moved that the communication be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

THE CLERK reported that he had received a communication from the Government of the North-Western Provinces, forwarding an abstract of the opinions of the several Revenue Officers in those Provinces on the practical working of Act X of 1859 (to amend the law re-

lating to the recovery of Rent in the Presidency of Fort William in Bengal).

MR. HARINGTON moved that the communication be printed.

Agreed to.

LIMITATION OF SUITS.

THE CLERK reported that he had received a communication from the Government of the North-Western Provinces, regarding the Bill "to amend Act XIV of 1859 (to provide for the Limitation of Suits)."

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

COURTS OF REQUESTS (STRAITS.)

THE CLERK reported that he had received a communication from the Home Department, forwarding papers from the Governor of the Straits Settlement in connection with the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. FORBES moved that the communication be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. HARINGTON moved the suspension of the Standing Orders to enable him to introduce and at once to carry through its several stages a Bill "to amend the Schedule annexed to the Code of Criminal Procedure." He observed, he believed he might say that the errors which this Bill was intended to amend were really clerical, but as the words which required to be altered stood as part of the Act as passed by the Council, a new law was necessary to make the requisite amendments.

The first Section of the Bill referred to Section 379 of the Indian Penal Code. As the Schedule was now worded, only the Court of Session or Magistrate of the District or other Officer exercising the full powers of a Magistrate could dispose of a case of simple theft; whereas there could be no doubt it was the intention of the Council to allow any Officer exercising any of the powers of a Magistrate, within the limits of the powers of punishment vested in him, to take cognizance of the offence mentioned in the Section in question.

The second Section applied to the offences described in Section 457 of the Indian Penal Code. The Schedule, as it now stood, rendered those offences cognizable only by the Court of Session or Magistrate of the District or other Officer exercising the full powers of a Magistrate. There seemed no reason why Subordinate Magistrates of the 1st Class should not be competent, within the limits of the powers of punishment vested in those Officers, to punish the comparatively simple cases of lurking house-trespass, specified in the Section of the Penal Code just mentioned by him, and he believed that he was correct in stating that it was the intention of the Council to give the Subordinate Magistrates of the 1st Class jurisdiction in such cases.

As the Code of Criminal Procedure was to come into operation on the 1st of January next, it was desirable that any alterations which were necessary should be made in it at once.

MR. BEADON seconded the motion for the suspension of the Standing Orders, which was carried, and the Bill then passed through all its stages without amendment; Mr. Beadon having been requested to take the Bill to the Governor-General for his assent.

On the Motion of Mr. Beadon, the Council adjourned till the 1st of January 1862.

BENGAL SECRETARIAT LIBRARY

INDEX

TO

THE PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA.

VOLUME VII.

A.

ADJOURNMENT OF COUNCIL. See Legislative Council.

AMALGAMATION OF SUPREME AND SUDDER COURTS.

Petition of Konkan Native Inhabitants to be transferred to the Government of India for disposal 463

ARTICLES OF WAR (*Native Army*) BILL.

Read 2° 37

Referred to Select Committee 39

Sir Robert Napier added to Select Committee 81

Communication from Military Department to be printed..... 464

Report of Select Committee presented 465

Committee of whole Council postponed, 529, 584, 632, 656, 678, 702, 777, 913

Communications from Military Department to be printed 584, 587, 657

Committee of whole Council 997

Adjourned 1004

Referred back to Select Committee 1005

Report of Select Committee presented 1006

Committee of whole Council resumed 1069

Reported 1071

Recommitted 1098

Reported 1099

Read 3° ..... *ib.*

Messenger 1144

Assent of the Governor-General 1146

B.

BANKS BILL.

Read 1° 1006

Standing Orders suspended 1007

Read 2° ..... *ib.*

BANKS' BILL.—(*Continued.*)

Committee of whole Council 1007
Reported ..... *ib.*
Read 3° ..... *ib.*
Messenger 1068
Assent of the Governor-General 1069

BANKS (*Amendment*) BILL.

Communication from Financial Department with Draft Bill to be printed 1148

BEADON, HON'BLE CECIL—

Breach of Contract Bill 84, 169, 178, 235, 243
Merchant Seamen's Bill 7
Penal Code (*Postponement*) Bill 286, 281
Prison at the Neilgherries 146, 154
Registration of Contracts Bill 260
Rohilcund Bill 282
Small Cause Courts Bill 97, 177
Stamp Duties 58
Wrecked Boats Bill 123, 138

BENGAL MILITARY ORPHAN SOCIETY BILL. (*Amendment of Act XXI of* 1860.)

Read 1° 633
Read 2° 663
Referred to Select Committee 680
Report of Select Committee presented 1072
Standing Orders suspended 1104
Committee of whole Council ..... *ib.*
Reported ..... *ib.*
Read 3° ..... *ib.*
Messenger 1144
Assent of the Governor-General 1146

BRANCH RAILWAYS, &c., BILL.

Read 1° 658
Read 2° 717
Referred to Select Committee 777
Mr. Erskine added to Select Committee 802
Petition of Landholders and Commercial Association of British India referred to Select Committee 915

BREACH OF CONTRACT BILL——(*Agricultural Produce.*)

Read 1° 84
Petition of Indigo Planters' Association to be printed 141
Petitions of Protestant Missionaries and British Indian Association read 169
Read 2° 178
Referred to Select Committee with instruction to submit preliminary Report 240
Proposed instruction to Select Committee withdrawn after debate 241
Petitions of Coal and Mineral Proprietors, of Protestant Missionaries, and of British Indian Association, referred to Select Committee 244

BREACH OF CONTRACT BILL. (*Agricultural Produce.*)—(*Continued.*)
Communication from Home Department regarding Act XI of 1860 referred to Select Committee 214
Two Petitions from Ryots referred to Select Committee 276
One ditto rejected ..... *ib.*
One ditto referred to Select Committee 301
Six ditto referred to Select Commitee 334
Sir Bartle Frere substituted for Mr. Beadon in the Select Committee 409
One Petition from Ryots rejected 454
Five ditto referred to Select Committee ..... *ib.*
Mr. Seton-Karr added to Select Committee 497
Petition of Ryots in Sonthal Pergunnahs presented 531
Petition of Bhownuggur inhabitants rejected 632
Petition of Landholders and Commercial Association of British India referred to Select Committee 656
Communication from Foreign Department referred to Select Committee 657
Explanation regarding Report of Select Committee 1145

C.

CATTLE TRESPASS BILL.
Petition of Indigo Planters' Association to be printed 296
Standing Orders suspended 302
Read 1° 304
Read 2° ..... *ib.*
Petition of Indigo Planters' Association to be printed 334
Referred to Select Committee (*with an instruction*) 409
Communication from Bengal Government referred to Select Committee 464
Mr. Seton-Karr added to Select Committee 496
Communication from Bengal Government referred to Select Committee 499
Report of Select Committee presented 587
Committee of whole Council postponed .. 632, 656, 678, 702, 777
Petition of British Indian Association to be printed 632
Communication from Bombay Government to be printed 803
Committee of whole Council 913
Reported 914
Read 3° 919
Messenger 973
Assent of the Governor-General ..... *ib.*

COMMITTEES OF WHOLE COUNCIL. (*Motions for——————and Reports.*)
Articles of War (*Native Army*) BILL (*with an instruction*) 997
Adjourned 1004
Resumed 1069
Reported 1071
Banks Bill 1007
Report ..... *ib.*
Bengal Military Orphan Society Bill (*with an instruction*) 1104
Report ..... *ib.*
Cattle Trespass Bill (*with an instruction*) 913

COMMITTEES OF WHOLE COUNCIL. (*Motions for ——— and Reports.*)—(*Continued.*)
Report 914
Civil Procedure Bill (*with an instruction*) 908
Adjourned 913
Resumed 972
Reported ..... *ib.*
Courts of Requests (*Straits Settlement*) Bill (*with an instruction*) .. 1066
Report ..... *ib.*
Flogging Bill (*with an instruction*) 1044
Report 1065
Income Tax (*Amendment*) Bill 804
Report 814
Land for public purposes Bill (*with an instruction*) 20
Report 21
Limitation of Suits (*Postponement*) Bill 415
Adjourned 417
Resumed 418
Reported 453
Malacca Lands Bill (*with an instruction*) 1066
Report ..... *ib.*
Merchant Seamen's Bill 1067
Report ..... *ib.*
Minors' Bill (*with an instruction*) 300
Report ..... *ib.*
Municipal Assessment (*Bombay*) Bill (*with an instruction*) 143
Report ..... *ib.*
Paper Currency Bill (*with an instruction*) 99
Report 123
Penal Code (*Postponement*) Bill 295
Report ..... *ib*
Pepper Duty (*Cochin*) Bill 25
Report ..... *ib.*
Police Bill (*with an instruction*) 143
Report ..... *ib.*
Police (*Temporary*) Bill (*with an instruction*) 490
Report ..... *ib.*
Port Blair, &c., Bill (*with an instruction*) 1066
Report 1067
Port-dues (*Amherst*) Bill 300
Report ..... *ib.*
Port-dues (*Calingapatam and Munsoorcottah*) Bill (*with an instruction*) 46
Report 47
Port-dues (*Concan*) Bill (*with an instruction*) 491
Report ..... *ib.*
Process (*Mofussil*) Execution (*Straits*) Bill (*with an instruction*) 678
Postponed ..... *ib.*
Resumed 914
Reported 915

COMMITTEES OF WHOLE COUNCIL. (*Motions for——and Reports.*)—(*Continued.*)

Rents Recovery (*Bengal*) Bill (*with an instruction*) 1099
Postponed 1104
Repeal of Regulations and Acts (*Civil Procedure*) Bill (*with an instruction*) 300
Report ..... *ib.*
Rohilcund Bill 282
Adjourned 283
Resumed 490
Reported 491
Salt Duty (*Bombay*) Bill 307
Report ..... *ib.*
Saltpetre Bill (*with an instruction*) 1105
Report 1106
Supreme Court (*Bombay*) Bill 21
Report ..... *ib.*
Small Cause Courts Bill (*with an instruction*) 480
Report 490
Stage Carriages (*with an instruction*) 664
Report 677
Sugar Duty (*N. W. P.*) Bill ..... *ib.*
Report ..... *ib.*
Wrecked Boats Bill (*with an instruction*) 123
Adjourned 138

COMMITTEES. SELECT——(*Motions for——and Reports.*)

Articles of War (*Native Army*) Bill 39
Report 465
Referred back 1005
Report 1006
Bengal Military Orphan Society Bill 680
Report 1072
Branch Railways, &c., Bill 777
Breach of Contract Bill (*with an instruction*) 240
Cattle Trespass Bill (*with an instruction*) 409
Report 587
Civil Procedure Bill 25
Report 465
Criminal Procedure Bill. Report 8
Courts (*Civil*) Constitution Bill (*with an instruction*) 297
Courts (*Criminal*) Constitution Bill (*with an instruction*) ..... *ib*
Courts of Requests (*Straits Settlement*) Bill 497
Report 974
Customs Consolidation Bill 803
Emigration (*Seychelles*) Bill 777
Enams (*Bombay*) Settlement Bill 702
Fines for Riots. Communication 585
Report 633
Flogging Bill 22
Report 814

COMMITTEES. SELECT——(*Motions for*——*and Reports*).—(*Continued.*)

Government Seal Bill 702
Grants of Immoveable Property Bill (*with an instruction*) 332
House of Correction (*Calcutta*) Bill (*with an instruction*) 843
Preliminary Report 1144
Income Tax (*Amendment*) Bill (*with an instruction*) 802
Report 804
Limitation of Suits (*Amendment*) Bill 1144
Malacca Lands Bill 47
Report 974
Merchant Seamen's Bill 26
Report 917
Minors' Bill. Report 278
Municipal Assessment (*Bombay*) Bill 26
Report 83
Municipal Assessment (*Rangoon, &c.*) Bill 38
Parsee Law. Report 844
Pepper Duty (*Cochin*) Bill. Report 2
Police Bill. Report 80
Port Blair Bill 47
Report 974
Port-dues (*Amherst*) Bill. Report 245
Port-dues (*Calingapatam and Munsoorcottah*) Bill. Report 28
Port-dues (*Concan*) Bill 26
Report 302
Process (*Mofussil*) Execution Bill (*Straits*). Report 499
Referred back 683
Report 844
Public Conveyances Bill. Report 974
Registration of Assurances Bill. Report 892
Registration of Contracts Bill (*with an instruction*) 273
Registration of Nijjote and Khamar Lands, &c., Bill 1068
Repeal of Regulations and Acts (*Civil Procedure*) Bill. Report 245
Repeal of Regulations and Acts (*Criminal Law and Procedure*) Bill 1067
Rent Recovery (*Bengal*) Bill (No. 2) 275
Report 917
Rohilcund Bill. Report 245
Saltpetre Bill 530
Report 1006
Small Cause Courts Bill (*with an instruction*) 178
Preliminary Report 302
Stage Carriages Bill. Report 278
Stamp Duties (*Amendment*) Bill 1144
Sugar Duty (*N. W. P.*) Bill (*with an instruction*) 275
Report 465
Wrecked Boats Bill. Report 57
Referred back (*with an instruction*) 138
Zemindary Dawks (*Bengal*) Bill 1145

CONVEYANCES (*Public*) BILL.

Petition of Calcutta Inhabitants referred to Select Committee 276

CONVEYANCES (*Public*) BILL.—(*Continued*).

Communication from Straits Government to be printed 296
Messrs. Harington and Seton-Karr added to Select Committee 530
Communication from Bombay Government referred to Select Committee 532
Report of Select Committee presented 974
Standing Orders suspended 1105
To be republished ..... *ib.*

COURTS (*Civil*) CONSTITUTION BILL.

Referred back to Select Committee 297
Communication from Government N. W. P. referred to Select Committee 973

COURTS (*Criminal*) CONSTITUTION BILL.

Referred back to Select Committee 297

COURTS OF REQUESTS (*Straits Settlement*) BILL.

Read 1° 455
Read 2° 480
Referred to Select Committee 497
Communication from Straits Government referred to Select Committee 704
Committee of whole Council 1066
Reported ..... *ib.*
To be republished 1067

CUSTOMS (*Straits Settlement*)

Communication from Straits Government regarding frequent departures of vessels without Port clearances, to be printed 703
Communication from Home Department with papers from the Straits Government, to be printed 1149

CUSTOMS BILL (*Consolidation of laws relating to the Collection of Duties.*)

Read 1° 465
Read 2° 782
Referred to Select Committee 308

D.

DIVISIONS OF THE COUNCIL.

On second reading of Flogging Bill 20
„ Mr. Laing's amendment in Section III of Paper Currency Bill 113
„ Sir Charles Jackson's motion for a message to Governor-General in Council calling for information regarding Prison at the Neilgherries 167
„ second reading of Breach of Contracts Bill 240
„ second reading of Registration of Contracts Bill 274
„ Mr. Forbes' proposed amendment in Sections 46 and 47 of Criminal Procedure Bill 328
„ Ditto Ditto in Section 74 of same Bill 330
„ Mr. Sconce's motion to omit Section 20 of same Bill 403
„ Sir Bartle Frere's amendment in the same Section 408
„ Mr. Harington's motion to postpone consideration of Limitation of Suits (*Postponement*) Bill 453
„ third reading of same Bill ..... *ib.*

DIVISIONS OF THE COUNCIL.—(*Continued*)

On Sir Charles Jackson's amendment in Section 162 of Criminal Procedure Bill 494
„ Sir Barnes Peacock's amendment in the same Section 496
„ Ditto Ditto Ditto 519
„ Ditto Ditto Ditto 521
„ Mr. Forbes' amendment in Section 173 of same Bill 524
„ Sir Charles Jackson's proposed amendment in same Section .... *ib.*
„ Mr. Harington's proposed amendment in Section 162 of same Bill 544
„ Sir Charles Jackson's motion to omit Section 164 of same Bill · 567
„ Mr. Seton-Karr's proposed amendment in same Section 571
„ Mr. Erskine's amendment in Section 210 (*b*) of same Bill 579
„ Mr. Forbes' proposed new Chapter after Chapter XX of same Bill 602
„ Mr. Erskine's amendment in Section 272 of same Bill 628
„ Sir Bartle Frere's proposed new Section in lieu of Section 269 of same Bill 649
„ Sir Bartle Frere's proposed amendment in same Section 650
„ Sir Barnes Peacock's proposed amendment in Licensing Bill ... 764
„ Sir Bartle Frere's proposed amendment in Paper Currency Bill.. 776
„ Mr. Harington's proposed amendment in Lunatic Clause of Criminal Procedure Bill 797
„ Sir Bartle Frere's ditto ditto ditto ditto ..... *ib.*
„ Sir Barnes Peacock's ditto ditto ditto ditto 798
„ the above Clause itself ..... *ib.*
„ Sir Barnes Peacock's proposed Section to follow Mr. Erskine's new Section after Section 336 of same Bill 84
„ Section 1 of Mr. Harington's new Chapter XIX (*c.*) in same Bill 861
„ Mr. Harington's proposed new Section after Section 353 of same Bill 873
„ Ditto's new Section in lieu of Section 302 of same Bill 883
„ Mr. Erskine's amendment in Chapter X of same Bill 970
„ Mr. Forbes' new Section after Section 407 of same Bill 991
„ Mr. Harington's proposed new Article in lieu of the 4th Article in the Articles of War Bill 1001
„ Ditto's amendment in the same Article ..... *ib.*
„ Ditto ditto ditto ..... *ib.*
„ Sir Charles Jackson's first proposed amendment in Section I of Flogging Bill..... 1053
„ Ditto's second ditto ditto 1056
„ Sir Bartle Frere's first proposed amendment in Section III of same Bill 1063
„ Ditto's second ditto ditto ..... *ib.*
„ Mr. Seton-Karr's proposed amendment in same Section..... 1064
„ Sir Charles Jackson's amendment in Section VI of same Bill 1134
„ Mr. Forbes' amendment in Section II of same Bill 1135
„ third reading of Flogging Bill 1144

DIVORCE (*Native Christians.*)

Petition of Lallchund Mookerjee presented 142

DIVORCE.—*See Matrimonial Causes, &c.*

E.

ELECTRIC TELEGRAPHS ACT.
Communication from Home Department to be printed 814

EMIGRANT VESSELS BILL.
Assent of the Governor-General 1

EMIGRATION (*Seychelles*) Bill.
Communication from Home Department to be printed 633
Read 1° 683
Read 2° 717
Referred to Select Committee 777

ENAMS (*Bombay*) SETTLEMENT BILL.
Read 1° 587
Second reading postponed 636, 662
Read 2° 684
Referred to Select Committee 702
Mr. Harington added to Select Committee 1068

ENDOWMENTS BILL. (*Repeal of Regulation XIX.* 1810, *Bengal Code, and Regulation VII.* 1817, *Madras Code.*)
Communication from Home Department referred to Select Committee 80
Mr. Beadon added to Select Committee 81
Despatch from Secretary of State referred to Select Committee 681

ERSKINE. MR. C. J.———(*Member for Bombay.*)
Amalgamation of Supreme and Sudder Courts 463
Articles of War (*Native Army*) Bill 998
Breach of Contract Bill 203
Criminal Procedure Bill, 330, 374, 509, 510, 519, 529, 535, 561, 570, 571, 574, 605, 610, 611, 613, 616, 620, 622, 644, 646, 650, 791, 821, 833, 835, 838, 863, 871, 874, 876, 877, 878, 882, 888, 896, 897, 900, 903, 931, 935, 962, 981, 982, ... 987
Customs Bill 465
Enams (*Bombay*) Settlement Bill 587, 637, 639, 663
Finances of India 83
Flogging Bill 10, 1046, 1057, 1129
Government Seal Bill 635
House of Correction (*Calcutta*) Bill 817
Income Tax (*Amendment*) Bill 807
Licensing Bill 755
Malacca Lands Bill 41, 43
Paper Currency Bill 100, 772
Penal Code (*Postponement*) Bill 286
Port-Dues (*Concan*) Bill 2
Prison at the Neilgherries 19
Registration of Nijjoto and Khamar Lands, &c., Bill 101
Salt Duty (*Bombay*) Bill 304
Stage Carriages Bill 674

FINANCES OF INDIA.

Petition of Madras Inhabitants and Tax-payers to be printed 1
Petition of Bombay Association to be printed..... 27
Enquiry as to charge on account of loss by Exchange in Railway transactions in 1860-61 83
Answer to above 84
Financial Statement for 1861-62 335
Financial Statement..... 705

FINES FOR RIOTS.

Communication from the Home Department referred to a Select Committee..... 585
Instruction to Select Committee 607
Communication from Bengal Government to be printed 633
Report of Select Committee presented ..... *ib.*
Ditto ditto adopted 679
Ditto to be taken to the Governor-General in Council 680
Two Communications from Bengal Government to be printed 974

FLOGGING BILL.

Read 2°..... 6
Referred to Select Committee 22
Communication from Foreign Department regarding Corporal Punishment in Oude, referred to Select Committee 301
Report of Select Committee presented 814
Committee of whole Council postponed 914
Petition of British Indian Association to be read 916
Ditto ditto to be printed..... 972
Committee of whole Council postponed 1004
Committee of whole Council..... 1044
Reported 1065
Third Reading postponed 1098
Re-committed 1107
Reported 1135
Read 3° ..... *ib.*
Messenger..... 1144

FORBES. MR. H. ——(*Member for Madras.*)

Courts of Requests (*Straits Settlement*) Bill 455, 1067
Criminal Procedure Bill.....328, 329, 330, 331, 405, 406, 494, 511, 522, 524, 528, 539, 562, 569, 570, 583, 596, 600, 602, 613, 614, 621, 643, 646, 699, 789, 796, 863, 879, 898, 981, 982, 983, 984, 988, 990
Emigration (*Seychelles*) Bill 683
Enams (*Bombay*) Settlement Bill 637
Fines for Riots 585, 679
Flogging Bill..... .....1046, 1049, 1050, 1054, 1062, 1127
Grants of Immoveable Property Bill 312
Income Tax (*Amendment*) Bill 806
Limitation of Suits (*Amendment*) Bill 1089, 1092

FORBES. MR. H. (*Member for Madras.* ——— (*Continued.*)
Limitation of Suits (*Postponement*) Bill 414, 440, 444
Municipal Assessment (*Rangoon, &c.,*) Bill 22
Paper Currency Bill..... 766
Penal Code (*Postponement*) Bill 288, 295
Process (*Mofussil*) Execution Bill (*Straits Settlement*) 683, 914
Stage Carriages Bill 673, 676

FRERE. HON. SIR H. B. E.———
Articles of War (*Native Army*) Bill 999, 1000, 1001, 1002, 1004
Banks Bill 1004, 1006, 1007
Breach of Contract Bill 223
Cattle Trespass Bill 678
Criminal Procedure Bill ..... 381, 397, 401, 404, 406, 407, 511, 514, 520, 537, 538, 543, 564, 570, 579, 605, 609, 644, 646, 647, 795, 834, 835, 836, 837, 838, 842, 860, 871, 880, 885, 886, 889, 893, 895, 898, 902, 965, 968, 984, 989,.... 991
Enams (*Bombay*) Settlement Bill 638, 685, 693
Flogging Bill ..... 1044, 1050, 1059, 1062, 1113, 1116, 1118, 1125, 1126, 1131, 1133, 1134, ... 1141
Grants of Immoveable Property Bill 298, 309, 313, 321, 323, 324, 325
Income Tax (*Amendment*) Bill.....705, 805, 810, 826, 827

Khosal Mundul's Petition.....54, 139
Licensing Bill 746, 757, 759, 760
Limitation of Suits (*Amendment*) Bill..... 1091
Limitation of Suits (*Postponement*) Bill 414, 442
Malacca Lands Bill 44
Paper Currency Bill.....38, 110, 764, 775
Penal Code 56
Penal Code (*Postponement*) Bill 294
Prison at the Neilgherries 159, 166
Registration of Contracts Bill 264
Registration of Nij-jote and Khamar Lands, &c., Bill 1020, 1022, 1029
Stage Carriages Bill 668, 677
Tobacco and Pawn (*Bengal*) Bill 1081

G.

GOVERNMENT SEAL BILL
Read 1° 635
Read 2°..... 697
Referred to Select Committee 702

GRANTS OF IMMOVEABLE PROPERTY BILL.
Read 1° 298
Read 2°..... 308
Referred to Select Committee (*with an instruction*) 332

H.

HARINGTON. MR. H. B.———(*Member for the N. W. P.*)
Articles of War (*Native Army*) Bill 999, 1002
Breach of Contract Bill 205, 241, 242
Cattle Trespass Bill..... 678
Civil Procedure Bill 20, 82, 909, 910, 911, 913, 994

HARINGTON, MR. H. B.——(*Member for the N. W. P.*)—(*Continued.*)

Courts (*Civil*) Constitution Bill 297
Courts (*Criminal*) Constitution Bill ..... *ib.*
Criminal Procedure Bill 277, 279, 299, 327, 329, 379, 455, 495, 500, 510, 512, 516, 520, 525, 528, 532, 533, 534, 535, 536, 537, 540, 541, 543, 549, 568, 572, 577, 579, 580, 599, 605, 610, 611, 612, 615, 616, 617, 620, 629, 642, 643, 644, 647, 649, 651, 653, 663, 786, 820, 825, 831, 834, 836, 841, 851, 853, 854, 858, 862, 865, 869, 872, 874, 875, 877, 878, 880, 884, 886, 888, 893, 896, 897, 899, 902, 903, 904, 906, 916, 921, 956, 958, 962, 968, 969, 979, 980, 982, 985, 987 989
Criminal Procedure (*Amendment*) Bill 1149
Fines for Riots 607
Flogging Bill 15, 914, 916, 1042, 1044, 1049, 1053, 1060, 1121, 1131, 1134 1139
Grants of Immoveable Property Bill 308, 309
House of Correction (*Calcutta*) Bill 814, 817
Income Tax (*Amendment*) Bill 716, 805, 811
Limitation of Suits (*Amendment*) Bill 1081, 1094, 1095
Limitation of Suits (*Postponement*) Bill, 412, 416, 418, 436, 444, 447, 452, 453
Paper Currency Bill 102, 105, 121, 775
Penal Code (*Postponement*) Bill 284, 287, 292, 293
Police (*Temporary*) Bill 459
Prison at the Neilgherries 151
Public Conveyances Bill 1105
Registration of Contracts Bill 266
Registration of Nij-jote and Khamar Lands, &c., Bill... 1015, 1021, 1022, 1024, 1029
Rent Recovery (*Bengal*) Bill 1099, 1101, 1103
Repeal of Regulations and Acts (*Civil Procedure*) Bill 325
Repeal of Regulations and Acts (*Criminal Law and Procedure*) Bill 974
Rohilcund Bill 282, 299
Saltpetre Bill 245, 1106
Small Cause Courts Bill 302, 480, 486, 487, 488
Stage Carriages Bill ... 301, 498, 664. 665, 666, 668, 669, 671, 675
Stamp Duties (*Amendment*) Bill 1008
Sugar Duty (*N. W. P.*) Bill 167, 175
Wrecked Boats Bill 135, 138
Zemindary Dawks (*Bengal*) Bill 1012

HIDDEN TREASURE. *See Treasure Trove.*

HOUSE OF CORRECTION (*Calcutta*) BILL.

Read 1° 784
Read 2° 810
Referred to Select Committee 845
Preliminary Report of Select Committee presented and adopted ... 1144

I.

INCOME TAX ACT.

Two Communications from Financial Department to be printed ... 633
Communication from Bombay Government to be printed 681
Communication from Financial Department regarding working of Lump Assessment in Allahabad and Benares to be printed 1072

INCOME TAX (*Amendment*) BILL.

Read 1° 703
Read 2° 782
Referred to Select Committee 802
Standing Orders suspended .... *ib.*
Instruction to Select Committee .... *ib.*
Report of Select Committee presented 804
Committee of whole Council .... *ib.*
Reported 814
Read 3° .... *ib.*
Messenger .... *ib.*
Assent of the Governor-General 843

J.

JACKSON. HON. SIR C. R. M. ——

Articles of War (*Native Army*) Bill 998, 1003
Banks Bill 1007
Bengal Military Orphan Society Bill 633
Breach of Contract Bill 197
Civil Procedure Bill 911
Criminal Procedure Bill, 394, 406, 521, 523, 528, 539, 540, 545, 564, 569, 611, 612, 618, 620, 628, 651, 653, 792, 824, 837, 839, 871, 883, 886, 888, 895, 901, 953, 983, 986, ... 990
Flogging Bill 6, 17, 914, 1043, 1048, 1049, 1050, 1052, 1053, 1055, 1056, 1058, 1060, 1062, 1063, 1107, 1116, 1118, 1124, 1131, 1132, 1133, 1135
Income Tax (*Amendment*) Bill 806, 827
Khosal Mundul's Petition 48, 55
Licensing Bill 750
Paper Currency Bill 773
Penal Code (*Postponement*) Bill 289, 293
Prison at the Neilgherries 144, 147, 148, 164
Stage Carriages Bill 664, 667, 668, 671, 672, 676

K.

KHAMAR LANDS. *See Registration of Nij-jote and ——— &c., Bill.*

KHOSAL MUNDUL'S PETITION.

Petition of Indigo Planters' Association to be printed and referred to Standing Orders Committee 47
Report of Standing Orders Committee presented 78
Adoption of Report postponed 80
Report adopted 138

L.

LAING. HON. SAMUEL——

Breach of Contract Bill 193
Criminal Procedure Bill 406
Finances of India 84, 335
Limitation of Suits (*Postponement*) Bill 414, 416, 434
Paper Currency Bill.. . 57, 59, 82, 100, 102, 112, 114, 118, 121, 124
Prison at the Neilgherries 148
Registration of Contracts Bill..... 269
Salt Duty (*Bombay*) Bill 307

LAND FOR PUBLIC PURPOSES BILL. (*Amendment of Act VI of* 1857.)

Committee of whole Council 20
Reported 21
Read 3°..... 25
Messenger ..... *ib.*
Assent of the Governor-General 40

LEGISLATIVE COUNCIL.

No Meeting on 26th January 39
Ditto ditto 23rd March 243
Meeting on Tuesday evening, 30th April 417
No Meeting on 11th May 462
Meeting on Monday evening, 2nd September 1069
Adjourned from 7th September to 16th November..... 1145
Message from the Governor-General with proclamation publishing the Indian Councils Act, 1861, read and ordered to be entered in the Minutes of the Council 1146
Adjourned from 16th November 1861, to 1st January 1862... 1150

LICENSING OF ARTS, TRADES, AND DEALINGS BILL.

Petition of British Indian Association to be printed 40
Communication from Commissioner of Pegu to be printed ..... *ib.*
Papers from Bengal Government to be printed 56
Communication from Financial Department reported 278
Re-committed 717
Reported 764
Read 3°..... *ib.*
Messenger 778
Assent of the Governor-General ..... *ib.*

LIMITATION OF SUITS (*Amendment*) BILL.

Petition of Calcutta Trades Association to be printed..... 333
Ditto of Russick Loll Ghose to be printed 462
Communication from Home Department with Memorial to be printed 498
Petition of Calcutta Trades Association to be printed 841
Ditto of Benares Bankers, &c., to be printed ..... *ib.*
First reading postponed 893
Read 1° 917
Second reading postponed 979, 1011
Petition of Mr. Singer presented 1006
Petition of Madras Trades Association to be printed 1069
Read 2° 108

LIMITATION OF SUITS (*Amendment*) BILL—(*Continued.*)

Referred to Select Committee 1144
Communication from Government N. W. P. referred to Select Committee 1149

LIMITATION OF SUITS (*Postponement*) BILL (*No.* 1.) (*Postponement of the whole of Act XIV of* 1859.)

Standing Orders suspended 410
Read 1° 415
Committee of whole Council ..... *ib.*
Adjourned 417
Petitions of Landholders' and Commercial Association of British India and of Native Inhabitants of the suburbs of Calcutta, presented and read ..... *ib.*
Committee of whole Council resumed 418
Reported 453
Read 3° ..... *ib.*
Messenger 454
Assent of the Governor-General ..... *ib.*
Despatch from Secretary of State to be printed 1148

LIMITATION OF SUITS (*Postponement*) BILL (*No.* 2.) (*Postponement of that part of Act XIV of* 1859 *which relates to retail bills.*)

Standing Orders suspended 1106
Read 1° and 2° 1107
Committee of whole Council ..... *ib.*
Reported 1107
Read 3° ..... *ib.*
Messenger 1144
Assent of the Governor-General 1146

M.

MATRIMONIAL CAUSES AND DIVORCE.

Petition of Moung Tom of Akyab to be printed 1006

MALACCA LANDS BILL.

Read 1° 30
Read 2° 41
Referred to Select Committee 47
Communication from Straits Government to be printed 56
Mr. Seton-Karr added to Select Committee 496
Petition of Malacca Inhabitants referred to Select Committee 584
Communication from Straits Government referred to Select Committee 608
Report of Select Committee presented 974
Committee of whole Council 1066
Reported ..... *ib.*
Read 3° 1098
Messenger 1144
Assent of the Governor-General 1146

MARKETS BILL.

Mr. Seton-Karr added to Select Committee 530

MASTERS AND SERVANTS.

Communication from Straits Government regarding relations of—to be printed 296

MEMBERS.

Mr. Seton-Karr sworn 462

MERCHANT SEAMEN BILL. (*Extension of Act I of* 1859.)

Read 1° 4
Read 2° 24
Referred to Select Committee 26
Communication from Straits Government to be printed 57
Communication from Bombay Government referred to Select Committee 142
Report of Select Committee presented 917
Committee of whole Council 1067
Reported ..... *ib.*
Read 3° 1098
Messenger 1144
Assent of the Governor-General 1146

MESSAGES.

Assent to Police (*Presidency Towns and Straits Settlement*) Bill .. 1
" " Emigrant Vessels Bill ..... *ib.*
" " Vacations (*Civil Courts*) Bill ..... *ib.*
" " Stamp Duties Bill ..... *ib.*
" " Railways Bill ..... *ib.*
" " Rent Recovery (*Bengal*) Bill ..... *ib.*
" " Supreme Court (*Bombay*) Bill 27
" " Land for Public Purposes Bill 40
" " Pepper Duty (*Cochin*) Bill 47
With Abstract Account of stipends paid to the Mysore Family .. 58
Assent to Port-dues (*Calingapatam and Munsoorcottah*) Bill 79
Regarding Prison at the Neilgherries 168
Assent to Police Bill 243
" " Penal Code (*Postponement*) Bill 299
" " Salt Duty (*Bombay*) Bill 333
" " Port dues (*Amherst*) Bill ..... *ib.*
" " Minors' Bill ..... *ib.*
" " Repeal of Regulations and Acts Bill 417
" " Limitation of Suits Bill 454
" " Small Cause Courts Bill 498
" " Police (*Temporary*) Bill ..... *ib.*
" " Rohilcund Bill 531
" " Port-dues (*Concan*) Bill ..... *ib.*
" " Stage Carriages Bill 703
" " Sugar Duty (*North-Western Provinces*) Bill ..... *ib.*
" " Licensing Bill 778
" " Paper Currency Bill ..... *ib.*
" " Municipal Assessment (*Bombay*) Bill ..... *ib.*
" " Income Tax (*Amendment*) Bill 8 84
" " Cattle Trespass Bill 973
" " Civil Procedure Bill 1005

MESSAGES.—(*Continued.*)

Assent to Banks' Bill 1069
" " Criminal Procedure Bill 1071
" " Malacca Lands Bill 1146
" " Port Blair Bill ..... *ib.*
" " Merchant Seamen's Bill ..... *ib.*
" " Articles of War (*Native Army*) Bill ..... *ib.*
" " Bengal Military Orphan Society Bill ..... *ib.*
" " Saltpetre Bill ..... *ib.*
" " Limitation of Suits Bill ..... *ib.*
Proclamation publishing the Indian Councils Act, 1861 ..... *ib.*

MESSENGER. Appointment of ———
(*See under head of each Bill.*)

MILITARY ORPHAN SOCIETY. *See Bengal*———

MINORS' Act (*XL of* 1858).
Communication from Home Department with papers from Government North-Western Provinces to be printed 682

MINORS' BILL.
Report of Select Committee presented 278
Committee of whole Council 300
Reported ..... *ib.*
Read 3° 326
Messenger 332
Assent of the Governor-General 333

MUNICIPAL ASSESSMENT (*Bombay*) BILL. (*Amendment of Act XXV of* 1858.)
Referred back to Select Committee 26
Report of Select Committee presented 83
Committee of whole Council 117
Reported ..... *ib.*
Re-committed 783
Reported ..... *ib.*
Read 3° ..... *ib.*
Messenger 803
Assent of the Governor-General ..... *ib.*

MUNICIPAL ASSESSMENT (*Rangoon, Moulmein, Tavoy, and Mergui*) BILL.
Read 1° 22
Communication from Commissioner of Pegu regarding Rangoon to be printed 27
Read 2° 37
Referred to Select Committee 38
Communication from Commissioner of Pegu referred to Select Committee 39
Two Petitions of Moulmein Inhabitants referred to Select Committee 142
Petition of Rangoon Inhabitants referred to Select Committee 244
Sir Bartle Frere substituted for Mr. Beadon in the Select Committee 420

MYSORE FAMILY.
Message from the President in Council with abstract account of stipends paid to the ——— 98

N.

NAPIER, HON. MAJOR-GENERAL SIR R.———
Breach of Contract Bill 223
Criminal Procedure Bill 398, 563, 613, 957
Licensing Bill 758, 732
Articles of War (*Native Army*) Bill 999, 1003
Limitation of Suits (*Amendment*) Bill 1090
Flogging Bill 1133

NEILGHERRIES. *See Prison at the*———

NIJ-JOTE LANDS. *See Registration of*———, &c., BILL.

NOTICES OF MOTION.
Banks' Bill. First reading and suspension of Standing Orders 1004
Breach of Contracts Bill. First reading 81
Courts of Requests (*Straits Settlement*) Bill. First reading 410
Criminal Procedure Bill. Third reading 1004
Emigration (*Seychelles*) Bill. First reading 702
Income Tax (*Amendment*) Bill. First reading 762
Second reading 773
Khosal Mundul's Petition. Adoption of Standing Orders Committee's Report 70
Licensing Bill. To be proceeded with 707
Limitation of Suits (*Amendment*) Bill. First reading 844
Municipal Assessment (*Rangoon, &c.*) Bill. First reading 22
Paper Currency Bill. Presentation of Select Committee's Report 57
To be proceeded with 702
Prison at the Neilgherries. Question 82
Registration of Contracts Bill. First reading 167
Registration of Nij-jote and Khamar Lands, &c., Bill. Second reading 1005
Rent Recovery Bill (No. 2). First reading 167
Repeal of Regulations and Acts (*Criminal Law and Procedure*) Bill. Second reading 1004
Saltpetre Bill. First reading 212
Second reading 497
Small Cause Courts Bill. First reading 81
Suspension of Standing Orders 302
Stamp Duties (*Amendment*) Bill. First reading 1004
Second reading 1007
Sugar Duty (*North-Western Provinces*) Bill. First reading 167
Tobacco (*Bengal*) Bill. First reading 1008

O.

ORDER, POINTS OF———
Municipal Assessment (*Bombay*) Bill referred back to a Select Committee 26
Wrecked Boats Bill ditto ditto 138
Notice not required for motion to forward Message to Governor-General in Council calling for information respecting the Jail at the Neilgherries 147
Petitions of Ryots, &c., regarding Breach of Contract Bill, rejected 2, 76, 154

POINTS OF——(*Continued.*)
Penal Code (*Postponement*) Bill passed through Committee of whole Council without being read 2° 295
Petition of Mr. Schokman rejected 324
Limitation of Suits (*Postponement*) Bill referred to Committee of whole Council without being read 2° 415
Petition of Bhownuggur Inhabitants against Breach of Contract law rejected 632
Process (*Mofussil*) Execution Bill (*Straits*) referred back to Select Committee 655
Articles of War Bill referred back to Select Committee 1002
Public Conveyances Bill, as amended by Select Committee, to be published 1105

ORDERS. STANDING——
Suspended 21, 38, 275, 302, 304, 410, 459, 1007, 1104, 1105, 1106, 1149

ORDERS. STANDING——COMMITTEE.
Petition of Indigo Planters' Association regarding Khosal Mundul's
Petition referred to—— 47
Report presented 78
Mr. Laing added to—— 79
Adoption of Report postponed 80
Report adopted 133

P.

PAPER CURRENCY BILL.
Standing Orders suspended 33
Mr. Laing added to Select Committee 35
Report of Select Committee presented 54
Committee of whole Council postponed 59
Petitions of Calcutta Trades Association and Bengal Chamber of Commerce presented 89
Committee of whole Council 91
Above Petitions read 100
Reported 123
Re-committed 764
Reported 776
Read 3° 777
Messenger 778
Assent of the Governor-General 45

PARSEES.
Communication from Bombay Government referred to Select Committee 27
Petition of Calcutta Parsees referred to Select Committee 32
Petitions of Bombay Parsees and of Ferozbhoye referred to Select Committee 463
Report of Select Committee presented 844
Ditto ditto adopted 915

PASSENGERS' ACT (*English.*)
Further Communication from Home Department to be printed 1

PAWN. *See Tobacco and*——(*Bengal*) BILL.

PEACOCK, HON. SIR B.——— *Chief Justice and Vice-President.*

Breach of Contract Bill 226, 240, 241, 1145
Criminal Procedure Bill 327, 369, 399, 401, 403, 406, 407, 494, 516, 519, 520, 521, 523, 526, 527, 529, 536, 540, 542, 557, 567, 589, 598, 605, 612, 624, 628, 641, 642, 647, 653, 654, 788, 790, 794, 801, 821, 828, 832, 834, 835, 836, 837, 839, 860, 862, 867, 870, 872, 873, 878, 884, 916, 954, 968, 969
Enams (*Bombay*) Settlement Bill 637, 685, 688
Flogging Bill 13, 17, 916, 1129, 1135, 1141
Grants of Immoveable Property Bill 308, 314, 321, 323, 324, 325
House of Correction (*Calcutta*) Bill..... 816, 817
Income Tax (*Amendment*) Bill 804, 808, 827
Khosal Mundul's Petition 50, 78, 139
Licensing Bill 717, 758, 763
Limitation of Suits (*Amendment*) Bill 917, 1072
Limitation of Suits (*Postponement*) Bill.....410, 415, 446, 1100
Paper Currency Bill.....109, 114, 121, 122, 374
Penal Code 95
Penal Code (*Postponement*) Bill 283, 287, 290, 295
Prison at the Neilgherries 147, 152
Registration of Contracts Bill 261
Rent Recovery (*Bengal*) Bill 1099, 1100
Small Cause Courts Bill 483, 484, 487
Stage Carriages Bill 498
Wrecked Boats Bill.....129, 137

PENAL CODE.

Despatch from Secretary of State expressing satisfaction at the passing of——— to be printed 95

PENAL CODE (*Postponement*) BILL.

Standing Orders suspended 283
Read 1° 295
Committee of whole Council..... *ib.*
Reported 295
Read 3° ..... *ib.*
Messenger..... *ib.*
Assent of the Governor-General 296
Despatch from Secretary of State ordered to be read 779

PENAL RECOGNIZANCES BILL.

Select Committee discharged 26

PLEADER DUTY (*Cochin*) BILL.

Report of Select Committee presented 2
Committee of whole Council..... 25
Reported 35
Read 3° 36
Messenger..... *ib.*
Assent of the Governor-General 47

PETITIONS.

Of Anglo-Indian Protective Association for exemption of Christians from the Arms Act 243
„ Benares Bankers, &c., regarding Limitation of Suits Act 844
„ Bengal Chamber of Commerce regarding Paper Currency Bill 32
„ Bhownugger Inhabitants against Breach of Contracts Bill, rejected 682
„ Bombay Association against State Prisoners Act III of 1858 40
„ Bombay Association relative to the Finances of India 27
„ „ Parsees regarding Parsee Code 453
„ British Indian Association regarding Criminal Procedure Bill 2
„ „ „ „ „ Licensing Bill 40
„ „ „ „ „ Police Bill 199
„ „ „ „ „ Breach of Contract Bill ..... ib.
„ „ „ „ „ Criminal Procedure Bill 277
„ „ „ „ „ Cattle Trespass Bill 632
„ „ „ „ against Flogging Bill 916
„ „ „ „ for republication of Criminal Procedure Bill ..... ib.
„ „ „ „ regarding Rent Recovery (*Bengal*) Bill 1079
„ Calcutta Inhabitants regarding Public Conveyances Bill 276
„ „ Trades Association regarding Paper Currency Bill 32
„ „ „ „ „ Limitation of Suits Act 332, 844
„ Coal and Mineral Proprietors regarding Breach of Contract Bill 244
„ Concan Native Inhabitants regarding amalgamation of the Sudder and Supreme Courts 46
„ Delhi Saltpetre Merchants against taxing Indian Saltpetre 372
„ Ferozebhoy regarding Parsee Code 489
„ Fire Insurance Associations regarding Stamp Duty on Fire Insurance Policies 53
„ Mr. William Greenway regarding Stage Carriages Bill 801
„ Indigo Planters' Association regarding Petition of Khosal Mundul 47
„ ——— regarding Breach of Contracts Bill 141
„ ——— Cattle Trespass Act 290, 334
„ Khosal Mundul and others regarding Recovery of Rents 17
„ Landholders' and Commercial Association of British India regarding Limitation of Suits Act 417
„ ——— against amenability of British-born subjects to Native Justices of the Peace 581
„ ——— regarding Breaches of Contract 659
„ ——— regarding Small Cause Courts Act 657
„ ——— and Calcutta Trades Association regarding Contempt Clause in Criminal Procedure Bill 367
„ Landholders' and Commercial Association of British India regarding Branch Railways, &c., Bill 95

PETITIONS.—(*Continued.*)

Of ——————— regarding Rent Recovery (*Bengal*) Bill .. 1071
„ Lall Chund Mookerjee for a Divorce Act for Native Christians .. 142
„ Madras Inhabitants and Tax-payers relative to the Finances of India 1
„ „ Trades Association for amendment of Limitation of Suits Act 1069
„ Malacca Inhabitants against Malacca Lands Bill 584
„ Moulmein Inhabitants regarding Municipal Assessment Bill 142
„ Moung Tom of Akyab regarding Matrimonial Causes, and Divorce 1096
„ Nuddea Zemindars regarding Rents Act (X of 1859) 142
„ Parsees of Calcutta regarding Parsee Code 296
„ Protestant Missionaries regarding Breach of Contracts Bill ... 169
„ Rajkissen Mookerjee against Tobacco and Pawn (*Bengal*) Bill . 1143
„ Rangoon Inhabitants regarding Municipal Assessment Bill... 232
„ Russick Lall Ghose regarding Limitation of Suits Act 464
„ Ryots against Breach of Contracts Bill..... 276, 301, 334 454
„ „ in the Sonthal Pergunnahs against Breach of Contracts Bill 551
„ Mr. Schokman, *rejected* 334
„ Mr. Singer, for a construction of Section XV of Limitation of Suits Act 1030
„ Suburbs of Calcutta Native Inhabitants regarding Limitation Act..... 117

POLICE BILL.

Report of Select Committee presented 80
Committee of whole Council postponed 138
Committee of whole Council..... 143
Reported ..... *ib.*
Petition of British Indian Association ordered to be read..... 169
Re-committed 243
Read 3° ..... *ib.*
Messenger ..... *ib.*
Assent of the Governor-General 243

POLICE (*Presidency Towns and Straits Settlement*) BILL.

Assent of the Governor-General 1

POLICE (*Temporary*) BILL.

Standing Orders suspended 459
Read 1° and 2° 461
Committee of whole Council 490
Reported ..... *ib.*
Read 3° ..... *ib.*
Messenger ..... *ib.*
Assent of the Governor-General 498

PORT BLAIR BILL.

Read 1° 28
Read 2° 41
Referred to Select Committee 42
Mr. Seton-Karr added to Select Committee 196
Report of Select Committee presented 974
Committee of whole Council 1066

PORT BLAIR BILL.—(*Continued.*)

Reported 1007
Read 3° 1098
Messenger 1144
Assent of the Governor-General 1146

PORT-DUES (*Amherst*) BILL.

Report of Select Committee presented 245
Committee of whole Council postponed 283
Committee of whole Council 300
Reported ..... *ib.*
Read 3° 325
Messenger 332
Assent of the Governor-General 333

PORT-DUES (*Calingapatam and Munsoorcottah*) BILL.

Report of Select Committee presented 28
Committee of whole Council 46
Reported 47
Read 3° 57
Messenger ..... *ib.*
Assent of the Governor-General 79

PORT-DUES (*Concan*) BILL.

Read 1° 2
Read 2° 24
Referred to Select Committee 26
Report of Select Committee presented 302
Committee of whole Council 491
Reported 492
Read 3° 499
Messenger 530
Assent of the Governor-General 531

POSTPONED MOTIONS AND ORDERS.

Second reading of Civil Procedure Bill 20
Committee of whole Council on Wrecked Boats Bill 79, 80
Committee of whole Council on Paper Currency Bill ..... *ib.*
Adoption of Standing Orders Committee's Report on Khosal Moi-dul's Petition ..... *ib.*
Committee of whole Council on Police Bill 138
Question regarding Prison at the Neilgherries 141
Second reading of Small Cause Courts Bill 143
Committee of whole Council on Port-Dues (*Amherst*) Bill 283
Presentation of Preliminary Report of Select Committee on Small Cause Courts Bill 297
Committee of whole Council on Criminal Procedure Bill, 299, [illegible]
Adjourned Committee of whole Council on Rohilcund Bill, [illegible], 331, [illegible], 451
Committee of whole Council on Stage Carriages Bill, 332, 409, [illegible], 496, 529, 584, [illegible], [illegible]
Committee of whole Council on Port-Dues (*Concan*) Bill ..... [illegible], 461
Adoption of Report of Select Committee on Small Cause Courts Bill, and suspension of Standing Orders 499, 461

POSTPONED MOTIONS AND ORDERS.—(*Continued.*)
Committee of whole Council on Civil Procedure Bill ... 529, 632, 655, 677,
Committee of whole Council on Sugar Duty (*N. W. P.*) Bill 584,
Committee of whole Council on Articles of War (*Native Army*) 529, 584, 632, 656, 678, 70 777 .....
Committee of whole Council on Process (*Mofussil*) Executi Bill (*Straits*) 584, 632,
Committee of whole Council on Cattle Trespass Bill, 632, 656, 702
Second reading of Enams (*Bombay*) Settlement Bill .....
First reading of Limitation of Suits (*Amendment*) Bill .....
Committee of whole Council on Flogging Bill .....
Second reading of Limitation of Suits (*Amendment*) Bill ....
Third reading of Criminal Procedure Bill .....
Committee of whole Council on Rent Recovery (*Bengal*) Bill
Third reading of Flogging Bill .....

PRISON AT THE NEILGHERRIES.
Question postponed .....
Question put and withdrawn .....
Message to Governor-General in Council calling for information.
Messenger .....
Message from Governor-General in Council and Memorandum .

PRISON DISCIPLINE.
Communication from Home Department regarding rules
——— to be printed .....

PRISONERS. *See State*——

PROCEDURE. CIVIL AND CRIMINAL ——— (*Supreme Courts.*)
Despatch from Secretary of State to be printed .....

PROCEDURE. CIVIL ——— Bill. (*Amendment of Act VIII of* 1859.)
Second reading postponed .....
Read 2° .....
Referred to Select Committee .....
Communication from Madras Government referred to Sel Committee .....
Communication from Government N. W. P. referred to Sel Committee .....
Report of Select Committee presented .....
Committee of whole Council postponed .... 529, 584, 632, 655, 67 702 .....
Committee of whole Council .....
Adjourned .....
Resumed .....
Reported .....
Re-committed .....
Reported .....
Read 3° .....

PROCEDURE. CIVIL——BILL. (*Amendment of Act VIII of* 1859)—(*Continued.*)
Messenger 1004
Assent of the Governor-General 1005
Petition of Moung Tom of Akyab to be printed 1006

PROCEDURE. CRIMINAL——BILL.
Petition of British Indian Association referred to Select Committee 2
Report of Select Committee presented 84
Re-committed 273
Adjourned 275
Petition of British Indian Association presented 277
Ditto ditto read 278
Committee of whole Council resumed ..... *ib.*
Adjourned 282
Postponed 299
Resumed 326
Adjourned 331
Resumed 365
Adjourned 409
Communication from Bengal Government reported 455
Committee of whole Council resumed 456
Adjourned 459
Resumed 461
Adjourned ..... *ib*
Communication from Bengal Government to be printed ..... *ib.*
Committee of whole Council resumed 492
Adjourned 496
Resumed 500
Adjourned 529
Petition of Landholders' and Commercial Association of British India against amenability of British-born subjects to Native Justices of the Peace presented and ordered to be read 531
Committee of whole Council resumed 532
Petition of Landholders' and Commercial Association of British India read ..... *ib.*
Committee of whole Council adjourned 583
Resumed 596
Adjourned 607
Resumed 609
Adjourned 631
Resumed 641
Adjourned 655
Committee of whole Council postponed 663
Resumed 698
Adjourned 701
Committee of whole Council postponed 777
Despatch from Secretary of State ordered to be read 779
Committee of whole Council resumed 783
Despatch from Secretary of State read ..... *ib.*
Committee of whole Council adjourned 802

PROCEDURE. CRIMINAL ——— BILL.—(*Continued.*)
Resumed 819
Adjourned 826
Resumed 827
Adjourned 848
Resumed 850
Adjourned 887
Petition of Landholders' and Commercial Association of British India and of Calcutta Trades Association presented and read ..... *ib.*
Ditto ditto to be printed 888
Committee of whole Council resumed 893
Adjourned 903
Petition of British Indian Association to be printed 916
Committee of whole Council resumed 919
Reported 972
Recommitted 979
Reported 994
Motion for third reading postponed ..... *ib.*
Read 3° 1044
Messenger 1067
Assent of the Governor-General 1071

PROCEDURE. CRIMINAL ——— (*Amendment*) BILL. (*Amendment of the Schedule.*)
Standing Orders suspended 1149
Passed through all its stages 1150
Messenger ..... *ib.*

PROCESS (*Mofussil*) EXECUTION BILL (*Straits*). (*Extension of Act XXIII of 1840.*)
Report of Select Committee presented 499
Committee of whole Council postponed 584, 632, 650
Committee of whole Council 678
Postponed ..... *ib.*
Referred back to Select Committee 683
Report of Select Committee presented ..... 84[illegible]
Committee of whole Council 914
Reported 915
To be republished ..... *ib.*

PUBLIC CONVEYANCES. *See Conveyances (Public) Bill.*

PUBLICATION OF BILLS.
Of Supreme Court (*Bombay*) Bill, *dispensed with* 21
„ Penal Code (*Postponement*) Bill, *dispensed with* 295
„ Salt Duty (*Bombay*) Bill, *dispensed with* 307

PUBLICATION OF BILLS.—(*Continued.*)
Of Limitation of Suits (*Postponement*) Bill, (No. 1), *dispensed with* 415
„ Small Cause Courts Bill, *dispensed with* 489
„ Police (*Temporary*) Bill, *dispensed with* 490
„ Process (*Mofussil*) Execution Bill, (*Straits,*) as settled in Committee of whole Council, *directed* 915
„ Banks Bill, *dispensed with* 1067
„ Courts of Requests (*Straits Settlement*) Bill, as settled in Committee of whole Council, *directed* 1067

PUBLICATION OF BILLS.—(*Continued.*)
Of Public Conveyances Bill, as amended by Select Committee, *directed* 1105
„ Limitation of Suits (*Postponement*) Bill, (No. 2), *dispensed with* 1107
„ Criminal Procedure (*Amendment*) Bill, *dispensed with* 1150

R.

RAILWAYS. *See Branch——&c., Bill.*
RAILWAYS BILL. (*Amendment of Act XVIII of* 1854.)
Assent of the Governor-General 1
RECOMMITTALS. (*Motions for——and Reports*).
Articles of War (*Native Army*) Bill (*under Standing Order No.* 87) 1098
Report 1099
Civil Procedure Bill (*under Standing Order No.* 87) 994
Report 996
Criminal Procedure Bill (*under Standing Order No.* 86) 274
Adjourned 275
Resumed 278
Adjourned 282
Resumed 326
Adjourned 331
Resumed 366
Adjourned 409
Resumed 456
Adjourned 459
Resumed 461
Adjourned ..... *ib.*
Resumed 492
Adjourned 499
Resumed 506
Adjourned 520
Resumed 532
Adjourned 583
Resumed 596
Adjourned 607
Resumed 609
Adjourned 631
Resumed 641
Adjourned 655
Resumed 698
Adjourned 701
Resumed 783
Adjourned 802
Resumed 819
Adjourned 826
Resumed 827
Adjourned 843
Resumed 850
Adjourned 887
Resumed 893

RECOMMITTALS. (*Motions for* —— —— *and Reports.*)—(*Continued.*)
Adjourned 908
Resumed 910
Reported 972
Criminal Procedure Bill (*under Standing Order No.* 87) 971
Report 994
Flogging Bill (*under Standing Order No.* 87) 1107
Report 1135
Licensing Bill (*under Standing Order No.* 87) 717
Report 764
Municipal Assessment (*Bombay*) Bill (*under Standing Order No.* 87) 768
Report ..... *ib.*
Paper Currency Bill (*under Standing Order No.* 87) 768
Report 774
Police Bill (*under Standing Order No.* 87) 242
Report ..... *ib.*
Repeal of Acts and Regulations (*Civil Procedure*) Bill (*under Standing Order No.* 87) 325
Adjourned 326
Resumed 365
Reported 366

REGISTRATION OF ASSURANCES BILL.
Mr. Seton-Karr added to Select Committee 497
Communication from Government N. W. P referred to Select Committee 656
Communication from Bombay Government referred to Select Committee 658
Communication from Bengal Government referred to Select Committee 683
Report of Select Committee presented 892

REGISTRATION OF CONTRACTS BILL (*Agricultural Produce.*)
Read 1° 170
Read 2° 251
Referred to Select Committee with an instruction 274
Mr. Seton-Karr added to Select Committee 497
Communication from Bengal Government referred to Select Committee 975

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c., BILL.
Read 1° 845
Read 2° 1015
Referred to Select Committee 1068

RELIGIOUS ENDOWMENTS. *See Endowments Bill.*

RENT RECOVERY (*Bengal*) ACT (*X of* 1859.)
Petition of Khosal Mundul and others to be printed 27
Petition of Nuddea Zemindars to be printed 142
Communication from Government N. W. P. to be printed 1148

RENT RECOVERY (*Bengal*) BILL (*No.* 1) (*Amendment of Act X of* 1859.)
Assent of the Governor-General 1

RENT RECOVERY (*Bengal*) BILL (*No.* 2) (*Amendment of Act X of* 1859.)
Read 1° 169

RENT RECOVERY (*Bengal*) BILL (*No.* 2) (*Amendment of Act X of* 1859.)—(*Continued.*)
Read 2° 245
Referred to Select Committee 275
Mr. Seton-Karr added to Select Committee 496
Communications from Bengal Government referred to Select Committee 682, 704
Communication from Government N. W. P. referred to Select Committee 777
Report of Select Committee presented 917
Committee of whole Council postponed 1066
Petitions of Landholders' and Commercial Association of British India and of British Indian Association presented and ordered to be read 1071
Committee of whole Council 1099
Foregoing Petitions read and to be printed ..... *ib.*
Further consideration of Bill postponed 1104

REPEAL OF ACTS AND REGULATIONS (*Civil Procedure*) BILL.
Mr. Erskine added to Select Committee 25
Report of Select Committee presented 245
Committee of whole Council 300
Reported ..... *ib.*
Recommitted 325
Adjourned 326
Resumed 365
Reported 366
Read 3° ..... *ib.*
Messenger 410
Assent of the Governor-General 417

REPEAL OF ACTS AND REGULATIONS. (*Criminal Law and Procedure*) BILL.
Read 1° 974
Read 2° 1012
Referred to Select Committee 1067

REPORTS. ADOPTION OF ——— BY THE COUNCIL.
Of Standing Orders Committee on Khosal Mundul's Petition 138
„ Select Committee on Fines for Riots. Communication 679
„ Select Committee on Parsee Law 915
Preliminary ——— of Select Committee on House of Correction (*Calcutta*) Bill 1144

REPORTS BY THE CLERK.
Communication from Commissioner of Pegu regarding a Municipal Act for Rangoon 27
Communication from Commissioner of Pegu regarding Licensing Bill 40
Communication from Home Department regarding English Passengers' Act 40
Despatch from Secretary of State expressing satisfaction at the passing of the Penal Code 55
Papers from Bengal Government regarding Licensing Bill 56
Communication from Straits Government regarding Malacca Lands *ib.*

REPORTS BY THE CLERK.—(*Continued.*)

Communication from Straits Government regarding modification of Merchant Seamen's Act I of 1859 57
Report of Indigo Commissioners and Minute of Lieutenant-Governor of Bengal thereon 59
Communication from Home Department regarding Religious Endowments Bill 30
Despatch from Secretary of State regarding preparation of Codes of Civil and Criminal Procedure for Supreme Courts 83
Communication from Bombay Government relative to Merchant Seamen's Bill 142
Memorandum from Home Department regarding Prison at the Neilgherries 168
Communication from Home Department regarding Indigo Contracts Act XI of 1860 244
Communication from Madras Government regarding Small Cause Courts 245
Communication from Bombay Government regarding Parsee Code 277
Communication from Financial Department regarding Licensing Bill 278
Communication from Straits Government regarding Public Conveyances, and relations of Master and Servant 296
Communication from Home Department regarding duties of Protector of Emigrants 301
Communication from Foreign Department regarding Corporal Punishment in Oude ..... *ib.*
Despatch from Secretary of State regarding Treasure Trove 335
Communication from Bengal Government regarding Criminal Procedure Bill reported 455
Communication from Bengal Government regarding Mr. Seton-Kar's appointment 462
Communication from Home Department regarding Transportation and Prison Discipline to be printed 464
Communication from Military Department regarding Articles of War Bill ..... *ib.*
Communication from Bengal Government regarding Cattle Trespass Act ..... *ib.*
Communication from Home Department with Memorial regarding Limitation of Suits Act 498
Communication from Bengal Government regarding Cattle Trespass Act 499
Communication from Military Department regarding Articles of War Bill 584
Communication from Home Department regarding Fines for Riots 585
Communication from Military Department regarding Articles of War Bill 587
Communication from Straits Government regarding Malacca Lands Bill 608
Two Communications from Financial Department regarding Income Tax Act 633

(REPORTS BY THE CLERK.—(*Continued.*)

Communication from Home Department regarding Emigration to Seychelles 633
Communication from Bengal Government regarding Fines for Riots *ib.*
Communication from Foreign Department regarding Breaches of Contract 657
Communication from Bengal Government regarding Saltpetre Bill *ib.*
Communication from Military Department regarding Articles of War Bill ..... *ib.*
Communication from Bombay Government regarding Income Tax Act 681
Despatch from Secretary of State regarding Native Religious Endowments Bill ..... *ib.*
Communication from Home Department regarding Minors' Act 682
Communication from Bengal Government regarding Village Watchmen's Bill ..... *ib.*
Communication from Bengal Government regarding Recovery of Rent Bill ..... *ib.*
Communication from Bengal Government regarding Registration of Assurances Bill 683
Communication from Straits Government regarding frequent departures of Vessels without Port Clearances 703
Communication from Straits Government regarding Courts of Requests 704
Communication from Bengal Government regarding Recovery of Rents Act ..... *ib.*
Communication from Bengal Government regarding Taxation of Salt obtained in refining Saltpetre ..... *ib.*
Two Despatches from Secretary of State connected with Civil Courts Constitution Bill 779
Despatch from Secretary of State regarding the Penal Code and the Code of Criminal Procedure ..... *ib.*
Communication from Government N. W. P. regarding Saltpetre Bill 780
Communication from Home Department regarding Amendment of Electric Telegraphs Act 844
Communication from Government N. W. P regarding Saltpetre Bill 844
Communication from Bengal Government regarding Registration of Nij-jote and Khamar Lands, &c., Bill 973
Two Communications from Bengal Government regarding Fines for Riots 974
Communication from Financial Department regarding working of the Lump Assessment in Allahabad and Benares 1074
Communication from Home Department with Despatch from Secretary of State regarding Limitation of Suits (*Postponement*) Act XI of 1861 1148
Communication from Financial Department with Draft of Banks Bill ..... *ib.*
Communication from Government N. W. P. regarding Act X of 1859 *ib.*

REPORTS BY THE CLERK—(*Continued.*)
Communication from Government N. W. P. regarding Limitation of Suits (*Amendment*) Bill ... 1149
Communication from Home Department with papers regarding Courts of Requests (*Straits*) Bill ... *ib.*

ROHILCUND BILL. (*Removal of certain tracts from the jurisdiction of ordinary tribunals.*)
Report of Select Committee presented ... 24[illegible]
Committee of whole Council ... 232
Adjourned ... 283
Postponed ... 299, 331, 409
Resumed ... 409
Reported ... 491
Read 3° ... 499
Messenger ... 530
Assent of the Governor-General ... 531

S.

SALT DUTY (*Bombay*) BILL.
Standing Orders suspended ... 304
Read 1° ... 307
Read 2° ... *ib.*
Committee of whole Council ... *ib.*
Reported ... *ib.*
Read 3° ... 308
Messenger ... *ib.*
Assent of the Governor-General ... 333

SALTPETRE BILL.
Read 1° ... 245
Read 2° ... 499
Referred to Select Committee ... 530
Communications from Bengal Government referred to Select Committee ... 657, 704
Petition of Delhi Saltpetre Merchants referred to Select Committee 779
Communications from Government N. W. P. referred to Select Committee ... 780, 844
Report of Select Committee presented ... 1006
Committee of whole Council ... 1105
Reported ... 1106
Standing Orders suspended ... *ib.*
Read 3° ... *ib.*
Messenger ... 1144
Assent of the Governor-General ... 1146

SCONCE. MR. A.—(*Member for Bengal.*)
Breach of Contract Bill ... 183
Cattle Trespass Bill ... 302, 335
Criminal Procedure Bill ... 327, 329, 366, 381
Grants of Immoveable Property Bill ... 309
Khosal Mundul's Petition ... 50
Limitation of Suits (*Postponement*) Bill ... 414, 437, 449
Malacca Lands Bill ... 30, 41, 44, 45

SCONCE, MR. A.—(*Member for Bengal.*)—(*Continued.*)

Paper Currency Bill 102, 114, 115, 119, 122
Penal Recognizances Bill 26
Port Blair Bill 28
Prison at the Neilgherries 149
Registration of Contracts Bill 170, 251, 272
Rent Recovery (Bengal) Bill 169
Wrecked Boats Bill 126, 137

SEAL *See Government—Bill.*

SERVANTS. *See Masters and——*

SETON-KARR, MR. W. S.—(*Member for Bengal.*)

Articles of War (*Native Army*) Bill 1000, 1003
Branch Railways, &c., Bill 658
Civil Procedure Bill 910, 991
Criminal Procedure Bill, 513, 525, 527, 534, 555, 567, 568, 570, 600, 601, 602, 605, 606, 612, 613, 624, 628, 629, 630, 631, 643, 649, 653, 655, 790, 829, 857, 862, 864, 871, 896, 902, 951, 983, 991 993
Enams (*Bombay*) Settlement Bill 639, 685
Flogging Bill 1047, 1057, 1062, 1063, 1124, 1128, 1139
House of Correction (*Calcutta*) Bill 780, 813
Income Tax (*Amendment*) Bill 807, 814
Licensing Bill 754
Limitation of Suits (*Amendment*) Bill 1089
Paper Currency Bill 771
Registration of Nij-jote and Khamar Lands, &c., Bill 845, 1022, 1023, 1034
Rent Recovery (*Bengal*) Bill 1099, 1102
Stage Carriages Bill 664, 669, 675
Tobacco and Pawn (*Bengal*) Bill 1072
Zemindary Dawks (*Bengal*) Bill 975, 1014

SMALL CAUSE COURTS ACT.

Petition of Landholders' and Commercial Association of British India to be printed 657

SMALL CAUSE COURTS BILL. (*Amendment of Act XLII of* 1860.)

Read 1° 97
Second reading postponed 143
Read 2° 177
Referred to Select Committee with instruction to present Preliminary Report 178
Communication from Madras Government referred to Select Committee 245
Presentation of Preliminary Report of Select Committee postponed 297
Preliminary Report presented 302
Adoption of Report and suspension of Standing Orders postponed 409
Committee of whole Council 480
Reported 490
Read 3° ..... *ib.*

SMALL CAUSE COURTS BILL. (*Amendment of Act XLII of* 1860.)—(*Continued.*)
Messenger 490
Assent of the Governor-General 498

STAGE CARRIAGES BILL.
Communication from Madras Government referred to Select Committee .....
Report of Select Committee presented 278
Petition of Mr. William Greenway presented 301
Committee of whole Council postponed.... 332, 409, 461, 496, 529, 584, 632 655
Motion to proceed with this Bill in Committee of whole Council before the Criminal Procedure Bill, proposed and withdrawn 497
Committee of whole Council 664
Reported 677
Read 3° 698
Messenger 702
Assent of the Governor-General 703

STAMP DUTIES (*Amendment*) BILL. (*No.* 1.)
Assent of the Governor-General 1

STAMP DUTIES (*Amendment*) BILL. (*No.* 2.)
Petition of Fire Insurance Association to be printed 58
Read 1° ..... 1[illegible]8
Read 2° ..... 10[illegible]7
Referred to Select Committee 1144

STATE PRISONERS. (*Arrest and detention of* ——)
Petition of Bombay Association against Act III of 1858 to be printed 40

SUGAR DUTY (*N. W. P.*) BILL.—(*Amendment of Act XIV of* 1843.)
Read 1° 175
Read 2° 274
Referred to Select Committee 275
Standing Orders suspended ..... *ib.*
Instruction to Select Committee ..... *ib.*
Report of Select Committee presented 465
Committee of whole Council (*postponed*) 529, 584, 632, 655
Committee of whole Council 677
Reported ..... *ib.*
Read 3° 698
Messenger 702
Assent of the Governor-General 703

SUITS AGAINST GOVERNMENT.
Communication from Bombay Government regarding trial of —— by District Moonsiffs, to be printed 609

SUPREME COURT (*Bombay*) BILL.
Standing Orders suspended 21
Committee of whole Council ..... *ib.*
Reported ..... *ib.*
Read 3° ..... *ib.*
Messenger ..... *ib.*
Assent of the Governor-General 27

T.

TELEGRAPHS. *See Electric* ——— *Act.*

TOBACCO [illegible] PAWN (*Bengal*) BILL.

Read 1° 1072

Petition of Rajkissen Mookerjee presented 1148

TRANSPORTATION.

Communication from [illegible] Department regarding punishment for escape from ——to be printed 464

TREASURE TROVE.

Despatch from Secretary of State to be printed 335

V.

VACATIONS (*Civil Courts*) BILL.

Assent of the Governor-General 1

VILLAGE WATCHMEN BILL.

Communication from Bengal Government referred to Select Committee 682

W.

WRECKED BOATS BILL.

Report of Select Committee presented 57

Committee of whole Council postponed 79

Committee of whole Council 123

Referred back to Select Committee 138

Communication from Madras Government referred to Select Committee 332

Z.

ZEMINDARY DAWKS (*Bengal*) BILL.

Read 1° 975

Read 2° 1012

Referred to Select Committee 1145